

**THE ISLAMIC REPUBLIC OF IRAN**  
**AND THE IMPORTANCE OF KHOMEINI'S "MANDATE OF THE JURIST"**

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## ABSTRACT

Twenty years after the Iranian Revolution there is a growing discourse in Iran concerning the nature of society and government within the Islamic Republic. Dissatisfied with the status quo, Iranians are calling for accountability of the government to the people, respect for individual freedoms and the rule of law, and economic reforms. In view of these trends in Iranian society, Iranian religious intellectuals are engaged in a debate concerning the role of religion in politics, the compatibility of Islam with democracy, relations with the West, and the role of the clergy. Increasingly, the debate is challenging Ayatollah Khomeini's concept of *velayat-e faqih* (The Mandate of the Jurist), as codified in the Constitution of the Islamic Republic. This paper seeks to address the question of the importance of Khomeini's concept of *velayat-e faqih* to the Islamic Republic of Iran.

I have divided the subject-matter into three chapters. In chapter one, I argue that the notion of *velayat-e faqih*, as interpreted by Khomeini, traces its roots to the late 18<sup>th</sup> century. As such, his notion represents the adaptation of an existing Shi'ite legal doctrine to the historical context of Iran in the 1960s and 1970s. While his definition of *velayat* (authority), and the source from which it devolves to the *foqaha* (Islamic jurists) seem to promote an autocratic government, there is some ambiguity in his argument concerning the role of the people. Finally, I argue that although Khomeini's is not the only interpretation of *velayat-e faqih*, it is unique in that it became the ideology for the Islamic Republic and was extensively codified in the Constitution.

Chapter two addresses the Constitution of the Islamic Republic and finds that it codifies Khomeini's concept *velayat-e faqih* by defining the state in Islamic terms; by binding legislation to *shari'a*; and by assuring the rule of Islamic jurists. Despite the Constitution's Islamic nature, it also carries over secular democratic elements from the previous Constitution, which are at times in contradiction to its Islamic elements. Furthermore, the 1989 revised Constitution creates the potential for a duality of religious and political authority by removing the requirement that the Leader be a *marja-e taqlid* (source of imitation).

In chapter three, I compare the arguments of Abdolkarim Soroush, Mohammad Mojtahed-Shabestari, and Mohsen Kadivar from within the contemporary discourse in Iran, which seek to address the question of what the nature of an Islamic Republic should be. I conclude that the trend of the discourse is the rejection of the use of Islam as ideology, a call for varying degrees of reform within the clerical establishment, the advocacy of a democratic form of government, and the rational and selective engagement of Western ideas.

I conclude that Khomeini's notion of *velayat-e faqih* arose from within a unique historical context, which made it possible for it to be accepted as the ideology of the Islamic Republic. Accordingly, it was codified within the Constitution and is the basis for the government and its institutions. As such, it provides the backdrop against which the present discourse is occurring. Within the contemporary Iranian context, however, it is being challenged, as Iranians seek to define an Islamic Republic that meets the needs of modern Islamic society. The defining criteria of an Islamic Republic, within this new context appear to be democratic government, respect for human rights, including the

freedom to hold different interpretations of Islam, and a reformed clergy, which promotes religious spirituality within society. Given this trend in the public discourse and the fact that the *foqaha* hold the reigns of power, any significant reforms will likely come from within the clerical establishment. Indeed, the reforms initiated by President Khatami may represent the beginning of such a trend. Lastly, I conclude that Khomeini's notion of *velayat-e faqih* has caused the Shi'ite clergy to adapt and innovate in the face of practical exigencies, which they face as a consequence of holding power.

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## **Introduction**

### **The Dilemma of the Islamic Republic Today**

Twenty years after the Iranian Revolution there is a growing discourse in Iran concerning the nature of society and government within the Islamic Republic. What is the role of religion in politics? Is Islam compatible with democracy? Is there such a thing as a final interpretation of Islam? How should Iran's relationship with the West be defined? Has the experience within the Islamic Republic since 1979 demonstrated a need for reform within the clerical establishment? All of which, ultimately, lead one to ask what the nature of an Islamic state should be. These questions and others are being debated in an increasingly public forum. Iranians are not satisfied with the status quo in Iranian politics and they are making their voices heard.

The fact that in 1997 people voted for Mohammad Khatami, a relatively unknown figure, may be seen as a vote of no confidence for the status quo. Khatami ran on an attractive three pronged ticket of restoring the rule of law at home, pursuing détente with the outside world, and strengthening the fragile domestic economy through structural reform.<sup>1</sup> Upon his victory he noted that his "election was a victory for the rule of law, freedom of expression, and political liberties of Iranian society."<sup>2</sup>

Khatami's message of social and economic reform resonated with many diverse groups within Iranian society. An analysis of Iranian society and the electorate shows that Khatami won with broad support from four sectors of Iranian society. They were:

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<sup>1</sup> For more on Khatami's reform agenda see, Azadeh Kian-Thiebaut, "La Classe Moyenne Urbaine, Socle de la Modernité en Iran Post-Islamiste," in Revue des Mondes Musulmans et de la Méditerranée, Volume 85-86, May 1999, pp 92-94.

<sup>2</sup> Jahangir Amuzegar, "Khatami's Iran One Year Later," Middle East Policy, volume VI, Number 2, (October 1998), p 76.



post-revolutionary youth, who sought relief from the unbearable sociopolitical restrictions on their lifestyle; women, who suffered from extensive gender discrimination in marriage, employment and mobility; the urban poor, who witnessed a dwindling standard of living despite the revolution's promises of greater prosperity and welfare; and secular intellectuals and middle class professionals, who found him less objectionable than other candidates.<sup>3</sup> The common theme amongst these groups was a call for change. Change in terms of economic living conditions, but more importantly, social change in terms of freedom and liberty.

President Khatami makes the case in his inaugural speech that the government must first and foremost institutionalize the rule of law, then empower the people in order to facilitate their intellectual, political, and social advancement.<sup>4</sup> If he prioritizes the pursuit of justice and social development over economic development it is because he argues that once the rule of law and a robust civil society are established, then economic prosperity will follow.<sup>5</sup> With this in mind, Khatami has helped establish the conditions for greater freedom of expression. In this environment new journals and newspapers have flourished, providing a forum for the exchange of ideas and opinions.

However, as the diversity of public discourse has grown, so have the tensions within the society, and even within the government. Two years on, Khatami's constituents, who turned out in record numbers to express their discontent in 1997, remain frustrated at the lack of real social, economic, and political reform. The

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<sup>3</sup> Ibid.

<sup>4</sup> Mohammad Khatami, Islam, Liberty and Development (Binghamton; Binghamton University Press, 1998), p 142.

<sup>5</sup> Interview with Mohammad Mahallati, Princeton University, June 1999. Professor Mahallati, former Ambassador to the United Nations for the Islamic Republic, was a visiting fellow at Princeton's Center for International Studies during the 1998-1999 academic year.

flourishing press has provided a venue for the expression of this frustration. The supporters of the status quo have grown increasingly less tolerant and more repressive of what they consider to be threats to the Islamic Government, which is based on Ayatollah Khomeini's concept of *velayat-e faqih* (Mandate of the Jurist). The case that perhaps exemplifies the tensions within the society, and the dilemma that they pose to the government is the student demonstrations that took place in July 1999. The demonstrations were intensified by the attack of police and vigilante forces on a student dormitory at Tehran University in the same month.

Neither the student demonstrations nor the police response were isolated incidents. Rather, they were part of a long list of events, which are demonstrative of the tension in the contemporary Iranian political discourse. During the Fall of 1998 several prominent dissident writers and opposition leaders were killed in what many believed to have been government related execution-style murders.<sup>6</sup> The revelation that the Intelligence Ministry had been involved in the murders caused such a furor that within several months the Intelligence Minister, Qorbanali Dorri Najafabadi, resigned after being "virtually hounded out of office by Khatami supporters."<sup>7</sup> Government authorities later imprisoned Sa'id Emami, an agent in the Ministry of Intelligence, for being the mastermind behind the killings of the political and intellectual dissidents.

Then in early July, '*Salam*', a Tehran newspaper, published information from a top-secret report written some 10 months previously by Emami, and provided to the then

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<sup>6</sup> In December of 1998, the pro-Khatami daily '*Salam*' uncovered information which forced the Intelligence Ministry to admit that its agents had assassinated Dariush Foruhar and his wife Parvaneh Eskandari, leaders of the nationalist and secularist Iranian People's Party, and writers Mohammad Mokhtari and Mohammad Ja'far Pouyandeh. For a detailed press account see Safa Haeri, "Master Killer is the Author of Bill to Kill Press Freedom, Papers," *Iran Press Service* (July 6, 1999).

<sup>7</sup> Reuters, 10 Feb 99 (Tehran).

Intelligence Minister Qorbanali Dorri Najafabadi, suggesting that the activities of the independent press and intellectuals be limited as much as possible. The press report coincided with the introduction into the *Majles* (Parliament) of a bill restricting press freedoms, and suggested that the legislation that was before the *Majles* was based on Emami's recommendations.

While tensions continued to mount, writers and activists favoring freedom of expression, the rule of law, and government accountability to the people sought to bring about such change by influencing public opinion and public officials via the press. On the other side were those who supported obligatory adherence to Islamic tenets as interpreted by Iran's ruling clerics. The latter group's view of society subordinated individual rights to religious obligation, and saw the discourse within the press as a threat to their idea of Islamic society. It was within this context of growing tensions that the events of July 1999 took place.

The conservative dominated *Majles* pushed the press bill through with limited debate. Meanwhile the judiciary ordered '*Salam*' closed, ostensibly for violations of the new 'press-reform' law. The next day a handful of students held a peaceful demonstration in their dormitories to protest the closure of '*Salam*'. Gangs of the conservative-controlled *Ansar-e Hezbollah*, supported by Intelligence Ministry units and Law Enforcement Forces viciously attacked the students in their dormitories. The raid left at least five students killed and over 200 wounded.

This triggered the largest demonstrations in Tehran since the Revolution in 1979. The fact that the demonstrators called for the Supreme Leader to be accountable to the people, since he had sole control over the Intelligence Ministry and Police Forces,

demonstrates the extent of the challenge to the status quo. The demonstrations in Tehran ended on July 14<sup>th</sup>, after conservatives bussed in thousands and organized rallies in support of the humiliated and insulted leader.<sup>8</sup> In other Iranian cities student demonstrators were violently repressed. It is ironic that 20 years earlier there had been similar mass demonstrations against the abuse of coercive power by a regime thought to be unaccountable to the people.

The scope and severity of the events that took place in July 1999 provide a measure of the depth of the dilemma facing the government of the Islamic Republic. The debate over the nature of the Islamic Republic is not new, but it is one which has been stifled until recently. In 1979, the question regarding the nature of the Islamic Republic was subordinated to the effort to overthrow the corrupt monarchical regime. Following Ayatollah Khomeini's consolidation of power and throughout the Iran-Iraq War such a question was seen as "counter-revolutionary".<sup>9</sup> Today this debate is part of the mainstream public discourse. Among the many dimensions, one aspect of the debate speculates on the kind of society and government that is allowed for from within the framework of the Constitution.

The editor of the now banned "Salam", Hojatoleslam Mohammad Mousavi Kho'einha, serves as a good case in point. He was a protégé of the Grand Ayatollah Ruhollah Khomeini, led the successful assault upon the then U.S. Embassy in Tehran in November 1979, and was later appointed State Prosecutor of the Islamic Republic.<sup>10</sup>

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<sup>8</sup> Safa Haeri, "Salam Probably Closed Out of Compromise Between the Rulers", Iran Press Service (August 6, 1999), p 1.

<sup>9</sup> For a description of how Khomeini and his followers responded to critique of *velayat-e faqih*, see Said Amir Arjomand, The Turban for the Crown, (Oxford; Oxford University Press, 1988), pp 138-146.

<sup>10</sup> Ibid, pg 2.

During his trial before the Special Court for the Clergy he pled not guilty and told the court,

"I say from the bottom of my heart that our Islamic system can only carry on if it guarantees the maximum of legitimate freedoms within the framework of the Constitution."<sup>11</sup>

Writers and activists such as Kho'eiha have sought to legitimize their positions on the basis of the Constitution, and by doing so they have highlighted the contradictions within it. There are also others, writers and philosophers such as Abdolkarim Soroush, Mohsen Kadivar, and Mohammad Mojtahed-Shabestari who have started anew the debate about divine knowledge versus consensus, and theocracy as opposed to democracy. They have dared to publicly critique Ayatollah Khomeini's theory of *velayat-e faqih* (The Mandate of the Jurist), which centers on the idea that an Islamic State should be governed by a just Islamic jurist. It was Khomeini's theory that became the ideology upon which the Constitution of the Islamic Republic was based. While Khomeini's theory has been critiqued on philosophical and religious grounds by the likes of Soroush, Kadivar, and Shabestari, it has also been debated by Iran's youth, who question the primacy of religion over individual rights, as demonstrated by the events of July 1999. What is at issue today in Iran is nothing short of the legitimacy of Khomeini's doctrine of *velayat-e faqih*, and the Islamic government that is based on it.

This paper seeks to address the question of the importance of Khomeini's concept of *velayat-e faqih* to the Islamic Republic of Iran? To such an end, I have divided the subject-matter into three chapters. In chapter one, I will analyze the notion of *velayat-e faqih* and attempt to place Khomeini's theory within the context of other writings on the idea. I will try to identify what distinguishes Khomeini's development of the idea from

the others, and to identify the changes he introduced. In chapter two, I will evaluate the Constitution of the Islamic Republic to determine how the concept of *velayat-e faqih* is reflected in it. I will also endeavor to bring out the contradictions between the Constitution's secular, democratic and Islamic components. In chapter three, I will compare several arguments from the contemporary discourse in Iran, put forward by prominent religious intellectuals, which seek to address the question of what the nature of an Islamic Republic should be. In conclusion I will attempt to evaluate the importance of Khomeini's doctrine to the Islamic Republic based upon the manner in which it is codified in the Constitution, and based on the contemporary discourse.

The primary sources for this work include Khomeini's *Al-Hukuma Al-Islamiya* (Islamic Government), in which he presents his notion of *velayat-e faqih* (The Mandate of the Jurist), the 1979 Constitution of the Islamic Republic of Iran, and the 1989 revised Constitution, as well as Persian language periodicals including *Kiyan* (World) and *Rah-e Now* (New Path).

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<sup>11</sup> Ibid.

## Chapter I

### The Concept of *Velayat-e Faqih*

Few observers, inside or outside of Iran, would have predicted that in 1979 the Iranian monarch would fall giving rise to a Shi'ite Theocracy. Under the leadership of Ayatollah Ruhollah Khomeini, Iran became an Islamic Republic with a government and constitution based on his notion of *velayat-e faqih*, (Guardianship or Mandate of the Jurist). His conception of this idea restricted the eligibility for leadership of the Islamic Republic to a very small number of men, specifically, to knowledgeable Islamic Jurists who were also considered to be just. The just *faqih*, according to Khomeini, would exercise temporal, as well as religious, power over the people, in order to administer an Islamic state.

This idea was not universally accepted, even within the ranks of the Shi'ite clergy. However, it is only recently that Khomeini's concept of *velayat-e faqih* and the nature of the Islamic state that it calls for have been discussed openly, albeit, not without risk. What is the idea of *velayat-e faqih*, and what is its history within Shi'ite thought and the wider Islamic context? This chapter seeks to answer these questions as well as to analyze the changes that Khomeini introduced to the idea, thereby distinguishing his notion from that of the others.

Prior to analyzing the historical development of *velayat-e faqih*, perhaps a brief discussion of the meaning of the phrase is warranted. *Velayat-e faqih* has been variously translated as 'mandate of the jurist', 'rule of the jurisconsult', 'guardianship of the jurist', and 'governance of the jurist'. *Velayat* (authority) is an important element of Islamic

jurisprudence and philosophy. God is the original source of *velayat*, from whence it is devolved upon the Prophet. Sunnis believe that *velayat* then devolves to the successors (caliphs) to the Prophet, while the Shi'ites reject this view, believing that it inheres to their *Imams*.<sup>12</sup> The sources are divided, however, when it comes to the scope of the *velayat* acquired by the *foqaha* (Islamic jurists) during the age of occultation.<sup>13</sup> Is it limited only to certain juridical matters, or does it extend to political authority as well? As we shall see, the interpretations regarding *velayat-e faqih* have evolved depending to a great deal upon the contextual circumstances of time and place.

#### The History of Velayat-e Faqih in Shi'ite Thought

Following the Prophet's death in 632, the Muslim community was ruled by non-members of the Prophet's family. Then, in 656 the cousin and son-in-law of the Prophet, Ali<sup>14</sup>, was chosen to rule. His inability to institutionalize the authority of the members of the Prophets household, and eventual murder were primary causes for the eventual split within the Muslim community between the Sunni and Shi'ite (followers of Ali). The Shi'ites developed their own vision of leadership and history based on the martyred family of the Prophet.<sup>15</sup> They based it upon the belief that *Imama* (leadership) of the Muslim community belonged to the descendants of Ali and his son Hossayn.

The disappearance of the twelfth *Imam* (circa 874) left the Shi'ite community in a crisis of leadership. To explain the disappearance, Shi'ite jurists developed the idea of

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<sup>12</sup> For a more detailed discussion regarding *Imama* and the devolution of *velayat* see the section in this chapter on 'The History of *velayat-e faqih* in Shi'ite Thought'.

<sup>13</sup> Shahrough Akhavi, "Contending Discourses in Shi'i Law on the Doctrine of *Wilayat al-Faqih*", *Iranian Studies*, vol 29, no. 3-4, Summer/Fall 1996, p 231.

<sup>14</sup> Later regarded as the first Shi'a Imam.

<sup>15</sup> For an account of the split between the Sunni and Shi'a branches of Islam see John L. Esposito, *Islam the Straight Path* (Oxford; Oxford University Press, 1994), pp 43-50.



the *ghayba* (occultation or absence). According to this notion, the twelfth *Imam* would remain hidden under divine guidance until his return at the end of the world to restore the community to its rightful place, and usher in a perfect Islamic society where truth and justice would prevail.<sup>16</sup> The question of what happened to the *velayat* of the *Imam* during his absence was answered by the *foqaha*.

The juristic thinkers of the time found that much of the temporal authority of the *Imams* was in abeyance.<sup>17</sup> This conception of *velayat* was thus in keeping with the doctrine of the *Imamate* as formulated under the leadership of the Sixth *Imam*, Ja'far al-Sadeq (d. 765). This doctrine, which was developed to assure the lasting sectarian organization of the *Shi'a* as a disciplined sect under institutionalized religious authority, disassociated supreme religious authority from actual political rule.<sup>18</sup>

While there were treatises in the medieval period that discussed the notion of *niyabat al Imam* (the deputyship of the Imam)<sup>19</sup>, it was not suggested within them that the *foqaha* should exercise political rule. Rather, the discussions regarding this notion focused on specific contexts such as the collection of alms and their distribution, and the disposal of the property of the heirless after their death.<sup>20</sup> Over time, the limited *velayat* of the *faqih* with regards to exercising juridical supervision over matters for which no legally responsible individual could be identified became well established.

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<sup>16</sup> John L. Esposito, *Islam the Straight Path* (Oxford; Oxford University Press, 1994), p 46.

<sup>17</sup> Akhavi, p 230. Al Sharif Al Murtaza (d. 1044) held that major aspects of the Imam's authority, such as implementing the penal code and leading the community in jihad were not devolved to the fuqaha.

<sup>18</sup> Said Amir Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran* (Oxford; Oxford University Press, 1988), p 11.

<sup>19</sup> Such as al Muhaqqiq al Hilli's (d. 1277) *al Mukhtasar al Nafi*, whose view was later promoted by Ali bin Abd al Ali al Karaki (d. 1533) who served as Shaykh al Islam in the Safavid period.

<sup>20</sup> For more on the medieval Shi'ite discourse regarding the nature of velayat see Arjomand, *The Shadow of God and the Hidden Imam*, (Chicago; University of Chicago Press, 1984), p 141, and Modarressi, "The Just Ruler or the Guardian Jurist: An Attempt to Link Two Different Shi'ite Concepts," *Journal of the American Oriental Society* 111, no. 3, (July/September 1991), p 552.

On the other hand, the emergence of the doctrinal position that a *faqih* should possess the political authority of the *Imams* can only be traced to the late 18<sup>th</sup> or early 19<sup>th</sup> century. An example of one of the earlier references to a *faqih* exercising political *velayat* is the record of Shaykh Jafar al Kabir Kashif al Ghita (d. 1813). He is said to have exercised the *Imam's velayat* in leading the defense of Najaf against the Wahhabi forces in 1805, and in issuing a *fatva* authorizing Fath Ali Shah to lead a *jihad* against the Russians during the war period of 1804-1813.<sup>21</sup> This action may have laid the groundwork for Ahmad bin Muhammad al Naraqi (d. 1828-29) to put forth his interpretation of *velayat-e faqih*.

In his book titled, *Awa'id al ayyam*, Naraqi found 19 different arguments to support the validity of *velayat-e faqih*. Naraqi argued, in keeping with the Usuli's insistence that the clergy were the 'general agents' of the hidden *Imam*, that the *marja-e taqlid* represented the *Imam*, and therefore possessed the latter's worldly, if not soteriological, authority.<sup>22</sup> Since doctrines emerge and evolve within the context of historical developments, it is important to note that Naraqi's interpretation occurred during a period when the Iranian Shi'ite community faced significant challenges, both from Wahhabi Islam and Russian expansion.<sup>23</sup>

One of Naraqi's students, Shaykh Morteza Ansari (d. 1864), rejected the view of his mentor, favoring instead a more restricted supervisory role over financial matters of those unable to protect their own interests. As one of the greatest figures of Shi'ite

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<sup>21</sup> Abdul Aziz Abdulhussein Sachedina, *The Just Ruler in Shi'ite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence*, (New York; Oxford University Press, 1988), pp 48-49, 119-120, as cited in Akhavi, p232.

<sup>22</sup> Roy Mottahedeh, "Wilayat al Faqih", in *The Oxford Encyclopaedia of the Modern Islamic World*, (New York; Oxford University Press, 1995). For a more complete discussion of Naraqi's interpretation of *velayat-e faqih* see Akhavi, pp 235-237.

<sup>23</sup> Bernard Lewis, *The Middle East*, (New York; Scribner Publishers, 1995) pp 281, 310.

jurisprudential theory in the nineteenth century, Shaykh Ansari enjoyed the title *marja' al mutlaq al taqlid* (the absolute source of imitation).<sup>24</sup> Ansari's main concern was to define the functions of the *faqih*, and thus delineate his power. He identified three functions for the *faqih*: *Ifta*-the authority to issue *fatwas*. *Hukuma*-adjudication or arbitration for dispute settlement. And *Velayat al-tasarruf fi' al amwal wa'l-anfus*-guardianship for the disposal of properties and persons. Ansari found widespread agreement among the *ulama* on the first two functions, but found the third controversial enough to warrant a detailed analysis.<sup>25</sup>

Ansari divided *velayat* into two forms. In the first, the guardian acts independently, the cause (*sabab*) of his actions being his discretion. In the second, the guardian does not act independently, but the action of others is dependent on his permission, since his discretion is the prerequisite (*shart*) for the action of others.<sup>26</sup> Ansari believed that the first sense of *velayat* is the prerogative of the Prophet and of his successors to leadership. He argues,

"Absolute authority over the people in both temporal and spiritual matters falls within the jurisdiction of the *Imams*. However, the second sense of *velayat*, including statutory and discretionary penalties, measures depriving people of their rights, and solutions to unforeseen events are specifically delegated to the *faqihs* in the absence of *Imams*. Thus, what remains is residual *velayat* in the sense that only certain kinds of power can be exercised and even then only with regard to Muslims unable to administer their own affairs, such as minors, the insane, and beneficiaries of public endowments."<sup>27</sup>

By arguing that the *faqih* had only limited *velayat* that was delegated to him in the absence of the *Imams*, Ansari's argument acknowledged the defacto role of the temporal

<sup>24</sup> Akhavi, p 237.

<sup>25</sup> Hamid Enayat, "Iran: Khomeini's Concept of the 'Guardianship of the Jurisconsult'," in James Piscatori, ed., *Islam in the Political Process*, (New York; Cambridge University Press, 1983), p 161.

<sup>26</sup> Ibid, p 162.

<sup>27</sup> Shaykh Morteza Ansari's "Kitab Al Makasib" (Tabriz, 1955), as cited in Hamid Enayat, "Iran: Khomeini's Concept of the 'Guardianship of the Jurisconsult,'" in *Islam in the Political Process*, 1982, pp 155-156.

ruler during the age of occultation. It also effectively confined the doctrine of *velayat-e faqih* to discrete economic matters that pertained to private citizens. In light of the thesis of this paper, it is important to note that Ansari's argument reasoned that no *faqih* should be obeyed in all temporal and spiritual matters, and that only the Prophet and the *Imams* had the authority to exert *velayat* over others.

A variety of factors surely contributed to Ansari's interpretation of *velayat-e faqih*, not the least of which was his personal attitude. He is said to have been a pure scholar, who avoided serving as a judge, and only reluctantly issued *fatvas*.<sup>28</sup> While his inclination to avoid exerting his authority within the Shi'ite community may have influenced his interpretation of *velayat-e faqih*, another factor was the historical context of his time. One could argue that the disastrous consequences for Iran of the war with Russia from 1804-1813, also influenced his interpretation of *velayat-e faqih*.<sup>29</sup> It was, after all, Shaykh Kashif al Ghita who had urged the Shah to declare *jihad*.

Although Ansari's doctrinal interpretation was to remain largely accepted until Khomeini introduced his changes, the situation was more complex in practice. For example, in 1890 the Qajar Shah granted a concession to the Imperial Tobacco Company, which allowed the British company to buy the entire Iranian tobacco crop.<sup>30</sup> This caused such unrest in Iran that in January 1891, Sayyed Jamal al Din, also called al Afghani, wrote to the pre-eminent *marja-e taqlid* of the time, Sayyed Mohammad Hasan Shirazi, usually called Mirza Shirazi, to urge him to action.<sup>31</sup>

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<sup>28</sup> Roy Mottahedeh, *The Mantle of the Prophet: Religion and Politics in Iran*, (New York; Pantheon Books, 1985), p 214.

<sup>29</sup> In the war with Russia, Iran lost much of the Caucasus, the area which makes up present day Azerbaijan and Georgia.

<sup>30</sup> For a historical account of the Tobacco Rebellion see Mottahedeh, pp 215-218.

<sup>31</sup> For the contents of Al Afghani's letter see Mottahedeh, pp 216-217.

In December 1891 Shirazi, who had been a student of Shayk Ansari, issued the following *fatva*,

"In the name of God, the Merciful, the Beneficient. Today the use of both varieties of tobacco, in whatever fashion is reckoned war against the *Imam* of the Age, may God hasten his advent!"<sup>32</sup>

The influence of the *marja-e taqlid* was stunningly demonstrated by the response to the *fatva*. For example, Naser ad Din Shah found that even those of his wives who were confirmed smokers chose to put away their water pipes. In January 1892, the Shah cancelled the concession, and in the same month Shirazi issued a *fatva* permitting the use of tobacco, and Iranians were smoking again.<sup>33</sup> While a variety of factors influenced the outcome in this case, two bear mentioning. The first is that the tobacco concession was unpopular with a broad cross section of Iranian society, therefore to a certain extent Shirazi's action capitalized on existing sentiment. Second, was the introduction of a new means of communication, the telegraph, which expedited the dissemination of Shirazi's *fatvas*.

When Shirazi later moved to Samarra, one of the students that moved with him was Mohammad Kazim Khorasani. Khorasani was soon recognized as the leading candidate to succeed Shirazi upon his death.<sup>34</sup> By 1906 the collective resentment against the Qajars was such that it became natural for the *ulama* to join the protests. In what later became the Constitutional Revolution, Khorasani, who had indeed succeeded Shirazi as *marja-e taqlid*, chose to support the constitutionalists. In 1906 a *Majles* (Parliament) was

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<sup>32</sup> Ibid, pp 217-218.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid. For biographical information on Mohammad Kazim Khorasani see Mottahedeh, pp218-219.

created and a constitution was signed by Mozzafar ad-din Shah, on his deathbed.<sup>35</sup> It is generally agreed that the constitutionalist movement would have failed were it not for the support of the *ulama*. By throwing the full weight of his authority as *marja* behind the new movement, Khorasani once again demonstrated the influence of the *faqih* in the political realm.<sup>36</sup>

Despite the political activism of certain *foqaha* and especially the *maraji al taqlid* during the Tobacco Rebellion and the Constitutional Revolution, no significant doctrinal developments were made with regard to the definition of *velayat-e faqih* during this period. The following interpretation, reflecting Ansari's view, therefore remained dominant as late as the 1960s,

"The *velayat* of the fully qualified *faqih*, according to indubitable evidence, is the authority over the affairs of those minors who have no specific parents, and over the insane, so that he may manage their affairs according to expediency, and also authority over the wife of a person who has disappeared as regards maintenance and divorce....and the supervision of those *awqaf* that are without a specific administrator, and the upholding of the *hudud* and judgeship and ruling according to the sacred law (*hokumat*) and resolution of hostilities and investigation of claims and upholding of rights, and the like."<sup>37</sup>

The historical development within *fiqh* (Islamic jurisprudence) of the doctrine concerning *velayat-e faqih*, and the socio-political context that influenced its development provide a backdrop for the next portion of this study, which is the development of Khomeini's thought and his interpretation of *velayat-e faqih*.

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<sup>35</sup> The 1906 Constitution is discussed in chp 2. For a discussion of the 1906 Constitutional Revolution see Mottahedeh, pp220-224, and Mohsen Milani, "Shi'ism and the State in the Constitution of the Islamic Republic of Iran," in S. Farsoun, ed., *Iran: Political Culture in the Islamic Republic*, (London; Routledge Press, 1992), pp 135-137.

<sup>36</sup> By no means were all members of the *ulama* in agreement with the Constitution. In fact, the debate over the Constitution and the Supplementary Law caused a rift within the clerical community. For a discussion of the various arguments put forth by the *ulama* see chp 2, and Farsoun, pp 136-137.

<sup>37</sup> Arjomand, p 178.

### Khomeini and the Evolution of his Thought

Ruhollah Mosavi Khomeini was born in 1902 to a prosperous family in the provincial town of Khomein. Both parents came from well-known clerical families in central Iran. His mother, who died when he was sixteen, was the sister of a local landlord and the daughter of Akhund Hajj Mulla Hosayn Khonsari, a highly respected *mojtahed* in Isfahan.<sup>38</sup> The Khonsaris were related to Shaykh Fazlollah Nuri, the conservative *mojtahed* executed during the Constitutional Revolution in 1909.<sup>39</sup> Khomeini's father, Sayyed Mostafa (1861-1902), studied first in Isfahan under the Khonsari family, then in Najaf where he obtained his higher theology degree. Four months after Khomeini's birth in 1902 his father was ambushed and killed.<sup>40</sup>

Khomeini received his early education in his hometown, where he studied at a *maktab* school, then studied calligraphy, Arabic, and Persian literature with older relatives. At 18, Khomeini went to Arak to study theology with Shaykh Abdul-Karim Ha'eri, a leading *marja'-e taqlid* known for his avoidance of politics.<sup>41</sup> Ha'eri served as Khomeini's mentor for the next 16 years. After one year in Arak, Ha'eri and his students moved to Qom, to revive a decaying nineteenth century seminary known as the Fayizieh.<sup>42</sup> In addition to studying with Ha'eri, Khomeini sought out other leading members of the *ulama*, the most important of whom was Mirza Mohammad Ali

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<sup>38</sup> E. Abrahamian, *Khomeinism: Essays on the Islamic Republic*, (Berkeley; University of California Press, 1993), p 5.

<sup>39</sup> Nuri had been the leader of the conservative clerical faction during the Constitutional Revolution (1905-1911), and had led the effort to include a clause in the Constitution that would give a panel of five *mojtaheds* the right to veto any legislation that they felt contradicted Islamic principles.

<sup>40</sup> During the Islamic Revolution stories circulated that his father had fallen to agents of the Shah, although the evidence suggests that he was killed in a confrontation arising from a family vendetta.

<sup>41</sup> Abrahamian, pp 6-7.

<sup>42</sup> Ibid. According to Abrahamian, "The notion that Qom is an ancient scholastic center is an invented tradition, and the claim that it was the hotbed of resistance against Reza Shah is self-serving fiction."

Shahabadi. Shahabadi was a prominent authority on the controversial subject of *erfan* (mysticism), and tutored Khomeini for six years.<sup>43</sup> Beginning in the 1930s, Khomeini joined the Fayizieh faculty where he published commentaries on hadiths, ethics, and mysticism.<sup>44</sup>

The period of the 1920s and 1930s was characterized by a lack of political involvement by the *marja'-e taqlid*. In contrast to Khorasani's activism during the Constitutional Revolution, his student Shaykh Ha'eri chose to remain apolitical. The involvement of the *ulama* on all sides of the debate during the Constitutional Revolution had revealed their divisions and damaged the power of a unified leadership that had made the *faqih* acknowledged as the 'most learned' a figure to be reckoned with.<sup>45</sup> It is likely that Ha'eri perceived the harmful fragmenting effect of political involvement on the *ulama* and sought to strengthen the clerical institution through his apolitical stance. Ha'eri may also have believed that, given Reza Shah's secular tendency, the best way to preserve the Fayizieh seminary was for him to maintain a low profile.

Despite developments that significantly eroded clerical prestige and power, Khomeini remained loyal to Ha'eri's view, and steered clear of politics.<sup>46</sup> Perhaps the most significant example of the damage done to the traditional authority of the clergy was when Reza Shah abolished religious courts in 1936, thus removing the central reason for which the *foqaha* existed, namely the administration of Islamic law.<sup>47</sup> New laws were

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid, p 8. Khomeini composed mystical poems that were published posthumously in a volume entitled *Divan-e She'r* [Book of Poetry]. In one of the poems he argued that divine truth would never be found in the mosque and the seminaries.

<sup>45</sup> Mottahedeh, p228.

<sup>46</sup> For example, in 1928 Reza Shah, the relatively new and self-appointed monarch of Iran, strode into a mosque wearing his boots and struck a mullah, who had reproached his mother for momentarily exposing her face. Then in 1935 the Shah's army shot into a crowd of protesters in the shrine in Mashad.

<sup>47</sup> Ibid, p227.



introduced concerning the qualification of judges. Only those who had a degree from the Tehran faculty of law or a foreign university could act as judges. Those who did not have either of these degree certificates were required to pass a special examination on Iranian law in order to continue as judges.

Khomeini's first foray into the political realm occurred in 1943, after the death of Ayatollah Ha'eri (d. 1937). In response to a book titled *Asrar-e Hezar Saleh* (The Secrets of a Thousand Years), written by a follower of Ahmad Kasravi, a former cleric who had become a leading secular Iranian intellectual, Khomeini published a defense of Shi'ite Orthodoxy titled, *Kashf-e Asrar* (Revealing the Secrets).<sup>48</sup> In his book, he attacked contemporary secularists, including Reza Shah and Ahmad Kasravi, under the guise of defending Shi'ism against Wahhabism. To a certain extent, his writings reveal the development of his thought up to that time. Far from calling for clerical rule, Khomeini instead urged the monarch to seek the advice of the *ulama*, arguing that the *ulama* should serve as a kind of parliament.<sup>49</sup>

Following the publication of *Kashf-e Asrar*, Khomeini kept himself out of the political realm, even during the oil crisis when other clerics, such as Ayatollah Kashani actively supported Prime Minister Mosaddeq against the British.<sup>50</sup> His apolitical stance was attributable, at least in part, to the views of Ayatollah Borujerdi, who in 1949 convened a meeting of clerics and urged withdrawal from the political arena.<sup>51</sup> Borujerdi argued that by remaining above the everyday wheeling and dealing of politics, the moral

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<sup>48</sup> Michael M.J. Fischer, "Imam Khomeini: Four Levels of Understanding," in *Voices of Resurgent Islam*, ed. J. Esposito, (New York; Oxford University Press, 1983), p 152. For more on Kasravi, see E. Abrahamian, *Iran Between Two Revolutions*, (Princeton; Princeton University Press, 1982), pp125, 258.

<sup>49</sup> Ibid, p 167.

<sup>50</sup> For a discussion of the nationalization of Iran's oil industry, the role of Prime Minister Mosaddeq and the restoration to power of the Shah by US and British efforts see Abrahamian, pp 262-280.

<sup>51</sup> Fischer, p 152.

power of the clergy would be more effective.<sup>52</sup> Khomeini, who came to be very close to Boroujerdi, remained loyal to his wishes until the latter's death in 1961.<sup>53</sup>

Khomeini's real entry into politics coincided with the introduction of a series of reforms by the Shah, which were later known as the White Revolution. These reforms were attacked by most of the religious establishment including such grand ayatollahs as Mohammad Kazem Shariatmadari, Mohammad Reza Golpayegani, and Ahmad Khonsari.<sup>54</sup> While many of these clerics attacked the idea of land redistribution, the central piece of the reforms, Khomeini focused his attention on the new electoral law enfranchising women and the referendum itself that endorsed the White Revolution.<sup>55</sup>

Khomeini proclaimed the electoral law un-Islamic and the referendum unconstitutional. In response to an attack by the Shah's army on the Fayizieh seminary in Qom that killed a number of students, Khomeini spoke at the fortieth day anniversary of the event. He charged the regime with tyrannical behavior and disposition to destroy the ordinances of Islam for Israel and oil. Khomeini continued his attacks through the Spring, when he delivered his most powerful speech yet on the 10<sup>th</sup> of Muharram (June 3, 1963). In it he referred to the Shah metaphorically as Yezid, the arch-tyrant and destroyer of Islam.<sup>56</sup> Despite the caustic attack on the regime, the speech echoed the solutions called for by Khomeini in his 1943 book, Revealing the Secrets: mainly that the Shah should seek the advice of the clergy. His declarations led to violent street demonstrations against the regime during the Moharram processions in June 1963.

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<sup>52</sup> Boroujerdi had reached an agreement with Mohammad Reza Shah in 1944, whereby the ulama would remain apolitical in return for certain concessions from the monarch with regards to women's dress and respect for Islam.

<sup>53</sup> During Boroujerdi's tenure Khomeini continued to teach mysticism, although he did it in secrecy due to Boroujerdi's disapproval of the subject.

<sup>54</sup> Abrahamian, Khomeinism, p10.

<sup>55</sup> Ibid.

During the unrest in 1963, Khomeini was arrested and detained. He was saved from execution by the intervention on his behalf of several ayatollahs, led by Ayatollah Mohammah-Kazem Shariatmadari.<sup>57</sup> Following his release from prison, Khomeini unleashed a blistering attack on the regime and claimed the legacy of the Constitution for Islam, arguing that Islam is the source of all freedom, independence, and greatness.<sup>58</sup> The charge that the clergy were reactionaries, who wanted to return to the Middle Ages was rejected and the blame for such rhetoric placed on Israel, the United States, and England.

It was in 1964 when the Shah extended diplomatic immunity to American military advisors, that Khomeini, comparing this to the nineteenth century Capitulation Agreements, attacked the Shah more viciously, and as a result he was immediately arrested and deported to Turkey, from where he later made his way to Najaf in Iraq.<sup>59</sup> He spent the next 13 years in Najaf, where he focused on teaching *fiqh*, rather than mysticism. During this period he issued no more than 14 political pronouncements.<sup>60</sup> Therefore, the religious community was shaken when in 1970 he presented a series of 17 lectures, in which he denounced the institution of the monarchy and the apolitical clergy, and suggested a new interpretation of the concept in *fiqh* known as *velayat-e faqih*. In the next section we will turn to a discussion of Khomeini's notion, which was distributed under the title *al Hukuma al Islamiya* (Islamic Government).

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<sup>56</sup> The reference to the Shah as Yezid continued to be used throughout the 1960s and 1970s.

<sup>57</sup> Following the Islamic Revolution, Shariatmadari opposed Khomeini's interpretation of *velayat-e faqih* and was humiliated and silenced by Khomeini and his supporters.

<sup>58</sup> Fischer, p 156. For a detailed account of Khomeini's speeches in 1963, see Fischer, pp 154-157.

<sup>59</sup> Abrahamian, *Khomeinism*, pp 10-11.

<sup>60</sup> Ibid.

Khomeini's Interpretation of Velayat-e Faqih

In al Hukuma al Islamiya (Islamic Government), Khomeini begins by critiquing current conditions as unjust and exploitative. He describes the systems of government from the time of the Ummayyads to the present as *shirk* (polytheist) and their rulers as *taghut* (idol worshippers).<sup>61</sup> To his fellow Muslims he says, "We are responsible for ridding our Muslim society of polytheism and forcing it from our lives completely."<sup>62</sup> He condemns the relegation of Islam to a system of worship and ritual as a perversion perpetuated by imperialist powers bent on subjugating and exploiting the lands of Islam, and argues that Muslims must develop a government based on Islam, just as Mohammed and Ali did in their time<sup>63</sup>. Khomeini's argument emphasizes the point that an Islamic government must be founded on Islamic Law.

The idea of oppressive, tyrannical governments that must be resisted had long been a part of Shi'ite Islamic thought. Furthermore, the belief that an Islamic state represented the best form of government was shared by many Sunni thinkers including the Syrian Rashid Rida (d. 1935), Egyptian Mohammed Al Ghazali (d. 1111), and Pakistani Abu-l A'la Maududi (d. 1979).<sup>64</sup> However, by finding all governments unjust and arguing for an Islamic state based upon Islamic law, Khomeini established the necessary premises for the next part of his argument.

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<sup>61</sup> Khomeini, p 33.

<sup>62</sup> Ibid, p 34.

<sup>63</sup> Ibid, p 39.

<sup>64</sup> Enayat, p 164. For more information regarding the thought of Rashid Rida, see Esposito, pp 131-132; for information about Maududi's ideas, see Esposito, pp 147-150, and for a brief discussion of al-Ghazali's thought, see Esposito, pp 103-105.

It is in the next portion of his book entitled *Nitham Al-Hukm Al-Islamiya* (Organization of the Islamic Government), that he presents his interpretation of the idea of *velayat-e faqih*. He argues that the leadership of the Islamic State should be vested in the just *faqih*, unquestionably emerging from the higher ranks of the religious establishment.<sup>65</sup> He reaches this conclusion by arguing that there are two qualifications for the ruler of an Islamic state. The first, being total knowledge of the law. The second, being total justice in its execution. Based on these two qualifications, Khomeini argues that Islamic jurists (*foqaha*) are the proper arbiters of Islamic law during the age of occultation.<sup>66</sup> He supports his argument by drawing parallels between the leadership of the *faqih* and that of Mohammed and Ali, though he applies the comparison only to the fitness to govern.<sup>67</sup>

In the next part of his argument Khomeini addresses the Islamic jurisprudential concept of *velayat-e faqih*. Khomeini's treatment of *velayat* lacks the nuances of Ansari's. Rather, he reverts to Naraqi's broader definition: the absolute authority of the jurist to act as ruler, serving as the deputy of the Imam.<sup>68</sup> According to his argument, *velayat* is either *takwini* (existential) or *i'tibari* (relative). The former is spiritual preeminence exclusive to the Prophet and the *Imams*, while the latter is the social and political duty of the *faqihs* to administer and rule the state, and implement the laws of the sacred path.<sup>69</sup>

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<sup>65</sup> S. Zubaida, "The Ideological Preconditions for Khomeini's Doctrine of Government," in Islam, the People and the State, 1989, p 14.

<sup>66</sup> Khomeini, pp 45-46. His conclusion is similar to that of Naraqi (d. 1829). For Naraqi's view, see p 11.

<sup>67</sup> Ibid, pp 49-50.

<sup>68</sup> Akhavi, p 239.

<sup>69</sup> Enayat, p 164.

Khomeini draws an analogy between the *faqih's* authority as guardian of a young person and guardian of the nation. He argues that,

"*Velayat-e Faqih* is among the rational relative matters that does not exist until appointed, like the appointment of a guardian for a young person. Guardianship of the nation and guardianship of a young person are no different in terms of duty and position...in such instances it would be incorrect to suggest that the Prophet and the *Imams* differ from the *faqih*."<sup>70</sup>

He asserts that the jurist's *velayat* is not intrinsic to the individual, but rather manifests itself based on the acknowledgment by others of the individual's knowledge of law and justice. With this interpretation of *velayat*, Khomeini provides the just *faqih* with vast power. Unlike Ansari, who limited the extent of *velayat*, and thus the power of the *faqih*, Khomeini, like Naraqi, requires that the just *faqih* undertake temporal rule during the age of occultation.<sup>71</sup>

Within the broader context of twentieth century Islamic political movements, Khomeini's most daring contribution to the modern debate regarded the nature of the Islamic state. He insisted that the essence of such a state is not its constitution, nor the commitment of its rulers to the *Shari'a*, but the special quality of its leadership. According to his argument, only the just *faqih* had these special qualities. Rashid Rida had also supported rule by a respected elite and praised the political dynamism of the Shi'ite *Mojtaheds*, as demonstrated in their leadership of the Tobacco Rebellion in Iran in 1892, and in the Iraqi Revolt of 1920. But Khomeini's support for the role of the *faqih* is much more forceful than anything envisioned by Rida.<sup>72</sup> Khomeini's conclusion regarding the role of the *faqih* is that with the exception of the privilege of receiving

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<sup>70</sup> Khomeini, p 50.

<sup>71</sup> Arjomand translates Khomeini's notion of *velayat-e faqih* as 'sovereignty of the jurist'. See Arjomand, p 178.

<sup>72</sup> Enayat, p 165.

divine revelation, all other powers of the Prophet are vested in Islamic jurists since the disappearance of the twelfth *Imam*.<sup>73</sup>

While Khomeini's notion argues forcefully for an Islamic state based on *fiqh* and led by a just *faqih*, it contains a number of elements that are contradictory to one another.

### Tensions within Khomeini's Concept of Velayat-e Faqih

Despite Khomeini's arguments against despots, the system of government suggested by his definition of *velayat-e faqih*, seems to promote autocracy by endowing the just *faqih* with the governing power of the infallible *Imams*. An Islamic group within the coalition that formed following the revolution, known as the *feda'iyan*, condemned the inclusion of Khomeini's concept of *velayat-e faqih* in the Constitution as an attempt to replace the monarchy with a "Khomeini-styled *caliphate* system."<sup>74</sup> The perception that such a system of government could lead to autocracy was similarly held by Grand Ayatollahs like Ayatollahs Shariatmadari and Qomi.<sup>75</sup>

Khomeini's writings suggest rule by a single *faqih*, rather than by consensus among *foqaha*. He says,

"*velayat* falls to the just *faqih*. Undertaking a government and laying the foundation of the Islamic state is a duty collectively incumbent on just jurists... If one such succeeds in forming a government it is incumbent on the others to follow him. If the task is not possible except by their uniting, they must unite to undertake it. If that

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<sup>73</sup> Ibid, p 167.

<sup>74</sup> Kar, no.33, (October 2, 1979) as cited in Milani, M. "Shi'ism and the State in the Constitution of the Islamic Republic of Iran", in S.K. Farsoun and M. Mashayekhi, Iran: Political Culture in the Islamic Republic, (London; Routledge, 1992), p 148. For an analysis of how Khomeini's *velayat-e faqih* was codified into the Constitution of the Islamic Republic see chp 2.

<sup>75</sup> Arjomand, pp 155-156. Both Shariatmadari and Qomi were concerned with the potential abuses of power by a *faqih* answerable only to God. They based their arguments against Khomeini's notion both on traditional *fiqh*, following Ansari's reasoning, and on constitutional grounds, arguing that his concept was inconsistent with the idea of popular sovereignty. See also, Fischer, pp 163-164.

were not possible at all, their status would not lapse, though they would be excused from the founding of a government."<sup>76</sup>

In developing his doctrine of *velayat-e faqih*, Khomeini addressed two arguments prevalent in Islamic discourse. Both arguments regard the nature of Muslim society. In the first argument, one side posits that once each individual becomes truly Muslim, all need for social coercion and oppressive state structures will wither away. While the counter-argument says that force may be required to establish the social conditions that can foster the development of true Muslims and a true Muslim society.<sup>77</sup>

In the second argument, one side contends that knowledge is accessible to all reasonable men, so society can rely on consultation among all men. While the counter-argument holds that Divine knowledge is the privilege of the few, such as the ulama, and so society must be ruled by tutelage dictatorship or oligarchy.<sup>78</sup> In the development of his theory, Khomeini clearly favored the latter answer in both arguments.

By arguing that only a just Islamic jurist is fit to govern, Khomeini's theory also implies that consultation among Muslims is insufficient to execute the laws of God and form a just society. According to Khomeini, individual freedom is also determined by the *faqih*, based on his interpretation of Islamic law. He writes that,

"the highest judge is, in fact, the law. Everyone falls under its protection, and people are free from the day of their birth to undertake their permissible behavior."<sup>79</sup>

Although *velayat-e faqih* is meant to be government for the people, it is certainly not government by the people.<sup>80</sup>

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<sup>76</sup> Arjomand, p 178.

<sup>77</sup> Michael M.J. Fischer, "Repetitions in the Iranian Revolution," in *Shi'ism, Resistance, and Revolution*, edited by Martin Kramer, (Boulder; Westview Press, 1987), p 125.

<sup>78</sup> Ibid.

<sup>79</sup> Khomeini, pp 50-51.



At the same time there are two distinctly democratic elements within his argument. The first is the idea that the *faqih* who rules gains his position by means of his reputation as a man whom the public can trust. This implies a relationship between the will of the people and the selection of the ruler. The second element provides for a degree of democracy within the ranks of the Islamic jurists. This stems from the Shi'ite belief that no *faqih* can have "absolute custodianship" over other *faqihs*, nor can he appoint or dismiss them. According to Khomeini there is no hierarchy among the *faqihs*.<sup>81</sup>

As we shall see in subsequent chapters the various tensions within Khomeini's interpretation come to be embedded in the Constitution of the Islamic Republic, and later become a part of the contemporary debate regarding the nature of an Islamic state. That said, I would like to briefly discuss the juridical critiques of Khomeini's notion provided by his fellow *foqaha*.

#### Jurisprudential Critiques of Khomeini's Interpretation

As a juristic theory, Khomeini's interpretation of *velayat-e faqih* introduced significant changes to a doctrine that had remained unchallenged since the definitive interpretation advanced by Shaykh Ansari in the mid-nineteenth century.<sup>82</sup> So it is not surprising that Khomeini's idea was critiqued by his contemporary Shi'ite *foqaha*, such as Mojtabeh Muhammad Jawad Maghniya, Ayatollah Ni'matullah Salehi-Najafabadi, and Ayatollah Hosayn Ali-Montazeri.

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<sup>80</sup> Enayat, p 172.

<sup>81</sup> Khomeini, p 51.

Mohammed Jawad Maghniya, a prominent Lebanese scholar and writer, admired Khomeini and the Iranian revolution. In fact, his view of Khomeini reached metaphysical heights when he quoted a saying attributed to the seventh *Imam*, predicting that,

“a man will come out from Qom, summoning the people to the right. There will rally to him people resembling pieces of iron, not to be shaken by violent winds, indefatigable, unsparing, and relying upon God.”<sup>83</sup>

Despite his support for Khomeini and the revolution, Maghniya was opposed to the doctrine of *velayat-e faqih*, which in his view equated the position of the *faqih*, an ordinary mortal, with that of the infallible *Imam*. He argued that,

“the *faqih*, being mortal himself, is liable to be conceited, forgetful, or mistaken. He may be swayed by his personal feelings, and his judgements are inevitably shaped by the environment and the socio-economic circumstances of his time. Thus while he has the competence and the duty to act as guardian over specific areas of social life and certain categories of Muslims, he cannot be the guardian of all areas of social life or all Muslims.”<sup>84</sup>

While Maghniya supported the idea of the non-separation of politics and religion, he took issue with Khomeini's doctrinal argument. According to Maghniya, any change to the doctrine of *velayat-e faqih* must be based on unambiguous text from the Koran, or hadith.<sup>85</sup> Without such textual authorization, no human being may exercise authority over other human beings. So despite his support for Khomeini and the Islamic Revolution, Maghniya concludes that the position espoused by Shaykh Ansari remains valid.

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<sup>82</sup> As has been pointed out, while the doctrine remained unchallenged, the practice of *velayat* by *foqaha* varied depending on the circumstances.

<sup>83</sup> Enayat, p 168.

<sup>84</sup> Ibid, p 169.

<sup>85</sup> Akhavi, p 242.

Another view regarding Khomeini's concept of *velayat-e faqih*, is that espoused by Ayatollah Salehi-Najafabadi.<sup>86</sup> He argues that the primary emphasis for legitimizing *velayat-e faqih* must be the people, in addition to the authority of divine appointment.<sup>87</sup> Whereas Khomeini's notion considered *velayat* to be *i'tibari* (relative) to that of the *Imams*, and therefore legitimized by the nature of its devolution from the *Imams*, Salehi argues that *velayat* consists of a social contract between the people and the designated *faqih*.

The authority of the *faqih* is therefore legitimized by his acceptance of the obligation offered to him by the people.<sup>88</sup> Salehi bases his view on a careful interpretation of Koranic verses, whereby he defines the nature of *velayat-e faqih* as contractual. The textual basis for his argument is a letter from *Imam Ali*, which says, "You are the treasurers of the people and the deputies of the community."<sup>89</sup> He argues further that the *bay'at* (the oath of allegiance), reflects a mutual obligation for both leader and people, rather than simply the traditional confirmatory function.<sup>90</sup>

Therefore, while Salehi is not opposed to rule by a *faqih*, he rejects Khomeini's argument that the source of the *faqih's* legitimacy stems from the *Imams*. Furthermore, he suggests that only a majority of the people can legitimize the rule of a *faqih*.<sup>91</sup> As we

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<sup>86</sup> Ayatollah Salehi-Najafabadi is representative of a younger generation of *ulama*, who take the role of people in politics into account in the development of their juristic thought.

<sup>87</sup> A. Moussavi, "A New Interpretation of the Theory of *Velayat-e Faqih*," *Middle East Studies* 28, no. 1, (January 1992), p 101.

<sup>88</sup> *Ibid*, p 102.

<sup>89</sup> *Ibid*, p 105. For a detailed discussion of the textual justification for Salehi's view, see Moussavi, pp 103-105.

<sup>90</sup> *Ibid*, p 104.

<sup>91</sup> By making use of social science arguments such as Rousseau's *Social Contract*, Ayatollah Salehi's interpretation demonstrates the extent to which *fiqh* is reconcilable with other fields of study and contexts. For two *faqihs* perspectives regarding the need to engage other fields of human knowledge see chp 3 on Mojtabah-Shabestari and Kadivar.

shall see Salehi's idea that legitimacy stems from the people is also shared by Ayatollah Montazeri.

A student of Khomeini's, Ayatollah Hosayn Ali Montazeri, later became his chosen successor until Montazeri's outspoken criticism of the Islamic Government soured their relationship and caused him to fall from favor. Montazeri's interpretation of *velayat-e faqih* mirrors that of Khomeini in so far as it calls for the establishment of an Islamic state led by a just *faqih*. Furthermore, Montazeri devotes significant attention to refuting the view advocated by Ansari, describing his treatment of *velayat-e faqih* with terms such as 'foolish', 'useless', and 'infantile'.<sup>92</sup>

The substantive difference between Khomeini and Montazeri's interpretations rests in their definitions of *velayat-e i'tibari* (relative authority). While Khomeini defines it simply as the social and political duty of the *faqih* to administer and rule the state, Montazeri divides it further into several grades. He argues, for example, that parents have a degree of *velayat-e i'tibari* with regard to the young in their charge. In describing the nature of *velayat* possessed by the *foqaha*, he suggests that it must be acknowledged by the people in order for it to be manifested. He cites, as an example, the Prophet's designation of *Imam* Ali as his successor. While the Prophet appointed him at the Oasis of Khumm, this was not recognized by Muslims in general. However, when *Imam* Ali received the *ba'iyah* upon the death of Othman, this represented the investiture by the people of the right to rule.<sup>93</sup> Montazeri's argument, therefore, implicitly calls for popular sovereignty as a means of underpinning the legitimacy of *velayat-e faqih*.<sup>94</sup>

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<sup>92</sup> Akhavi, p 254.

<sup>93</sup> Ibid, p 255.

<sup>94</sup> While Montazeri implies the role of the people, Salehi's argument is more explicit as to the need for the support of a majority of the people as a legitimizing factor for clerical rule.

These views represent the diversity of opinion regarding the doctrine of *velayat-e faqih* within the realm of contemporary Islamic jurisprudence. Furthermore, they serve to provide the juristic context within which one may place Khomeini's interpretation.

### Conclusion

As we have seen, the question of what happened to the *velayat* of the *Imam* during his absence has been debated since soon after his occultation (circa 874). While the doctrine that the *foqaha* possessed limited *velayat* for specific judicial matters became well established during the Medieval period, the notion that their authority extended to political rule was not suggested until the late 18<sup>th</sup> or early 19<sup>th</sup> century.

Preceding Khomeini by more than 150 years, Ahmad bin Mohammad al Naraqi (d. 1829), presented an interpretation of *velayat-e faqih*, in which he argued that the *foqaha* were general agents of the hidden *Imam*, that the *marja'-e taqlid* represented the *Imam*, and therefore possessed the latter's worldly power. However, the seminal work regarding *velayat-e faqih*, whose interpretation became the doctrinal definition of the concept until Khomeini effectively challenged it, was produced by Shaykh Morteza Ansari (d. 1864).

While Ansari's doctrinal interpretation remained intact for over a century, I have shown that in practice, the religious leadership felt obliged to intervene in politics during times of crises, such as during the Tobacco Rebellion (1890-1892), and the Constitutional Revolution (1906-1910).

The development of Khomeini's notion of *velayat-e faqih* took place within a particular historical context, without which it may never have occurred. The abolition of

religious courts in 1936, the Shah's White Revolution, granting of special status to American servicemen, and ties with Israel contributed significantly to the development of Khomeini's thought. As Khomeini puts it,

"It would never have occurred to anyone to question that religious scholars should supervise politics had it not been for the attempts of the Jews and the imperialists to suggest otherwise."<sup>95</sup>

Within this historical context, Khomeini developed his interpretation of *velayat-e faqih*. Adapting the definition of *velayat* put forth by Naraqi to the contemporary circumstances, he argued for the establishment of an Islamic state based on *Shari'a*. By defining the criteria for leadership in terms of total knowledge of *Shari'a* and total justice in its execution, he concludes that the Islamic state must be ruled by a just *faqih*. He legitimizes the rule of the just *faqih* by arguing that in terms of the right to rule an Islamic state, there is no difference between the just *faqih* and the Prophet and the *Imams*. While there are some ambiguities within the argument concerning the role of the people in selecting the *faqih*, implicit in the argument is the notion that the *faqih* rules by the authority of God.

It is worth mentioning that Khomeini's argument favoring rule by the *faqih*, based on the notion that he is best suited to interpret God's law, reflects his mystical tendencies. Indeed, one could argue that Khomeini's objective transcended the establishment of an Islamic government under the leadership of a just *faqih*, and focused rather on the mystical goal of bringing man closer to understanding God. According to Khomeini,

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<sup>95</sup> Hamid Algar (trans), *Islam and Revolution: Writings and Declarations of Imam Khomeini*, (Berkeley; Mizan Press, 1981), p 55, as cited in Fischer, in Esposito, *Voices of Resurgent Islam*, p 157. Khomeini is arguing that Islam and politics would never have been separated in the first place were it not for these foreign influences, but at the same time his thought is defined in terms of these influences on Islamic society through a corrupt monarch.

“(governance by *velayat-e faqih*) is not the ultimate aim; it is merely the means for advancing man toward that goal for the sake of which all the Prophets were sent.”<sup>96</sup>

Lastly, the contemporary interpretations of other prominent *foqaha*, which differ from Khomeini's, indicate the diversity within the juristic discourse, and shows that while significant, Khomeini's is not the only view regarding *velayat-e faqih*. The interpretations range from Maghniya's support for Ansari's view of limited *velayat*, to Salehi's concept based on a social contract, and Montazeri's notion that implies reconciling *velayat-e faqih* with popular sovereignty.

Khomeini's interpretation is unique among the various views discussed above, in that after the 1979 Revolution it became the ideology for the Islamic Republic and was extensively codified in the Constitution. In order to evaluate the importance of his notion to the Islamic Republic, I will evaluate the Constitution and the 1989 revision in the following chapter.

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<sup>96</sup>Ibid, p 166.

## Chapter 2

### The Constitution of the Islamic Republic and the Concept of *Velayat-e Faqih*

A few months after the return of Ayatollah Khomeini to Iran in March 1979 a referendum was put to the people, asking them to vote for or against the Islamic Republic. 98% voted in favor of the Islamic Republic, and it was following this vote of confidence that a body of 73 representatives of the people, called the Assembly of Experts, drafted a constitution for the newly established Islamic Republic. The Constitution, which embodied the Islamic nature of the state, was approved by the Assembly on November 15, 1979.<sup>97</sup> This constitution was later revised and ratified in July 1989, on the order of Ayatollah Khomeini in an attempt to correct certain deficiencies and to reflect certain changes in the nature of the leadership

In this chapter I will discuss the historical context of Iran's constitutional tradition by examining the 1979 and 1989 constitutions of the Islamic Republic. I will argue that while Khomeini's concept of *velayat-e faqih* is central to the spirit of the Islamic constitution, other elements within it are more reminiscent of a "secular order" that contributes to the dual nature of the constitution, which at times result in contradiction.

#### The Early Constitutional Movement in Iran

Since the establishment of Shi'ism as the state religion under the Safavid rulers of Iran in 1501, there has been a symbiotic relationship between the *Shi'ite* clergy and the monarchy. The tension that existed between religious law (*shari'a*) and secular law was

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<sup>97</sup> The Constitution of the Islamic Republic of Iran, foreword, (Tehran; Islamic Propagation Organization, 1979), p 1.



managed deftly by the monarchs. However, at the beginning of the twentieth century a new force emerged in Iran that made it much harder to manage this tension. The constitutional movement, which reflected the force of the people, sought to loosen the shackles of foreign domination, reform Iran's political and economic systems, and restrain the power of the monarch.<sup>98</sup>

To this end a constitution was written, based largely on the Belgian constitution of 1831, and was signed by Mozaffar ad-Din Shah Qajar on his deathbed in 1906. The constitution made the Parliament (*Majles*) the promulgator of law, and delineated its powers and limitations. The Constitution, which was based on a secular European model, enhanced the role of secular law in Iranian society, which increased the tension in the debate over secular versus religious law. To reduce the tension, a Supplementary Fundamental Law was drafted and passed, which added an ecclesiastical committee with the power to veto *Majles* legislation that it found to be contrary to Islam.<sup>99</sup>

The establishment of the *Majles* and the ecclesiastical committee represented the two forces within the constitutional movement: the intelligentsia and the Shi'ite clergy (*ulama*). Their tenuous relationship was based on convenience rather than ideological compatibility. The intelligentsia hoped to form a European-style constitutional monarchy founded on secular laws. However, since they could not achieve their objectives alone, they co-opted the *ulama* in order to do so. The *ulama*, meanwhile, were determined to protect Shi'ism and sought to be recognized as promoters of progressive ideas.

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<sup>98</sup> Mohsen Milani, "Shi'ism and the State in the Constitution of the Islamic Republic of Iran", in S. Farsoun and M. Mashayekhi's *Iran: Political Culture in the Islamic Republic*, (London; Routledge Press, 1992), p 133.

<sup>99</sup> The main proponent for the addition of the ecclesiastical committee was Shaykh Nuri, a distant relative of Khomeini's. For more on Nuri see chp. 1, p 16.

The legislative prerogative of the *Majles* caused a rift to develop within the ranks of the *ulama*. The phenomenon of secular laws promulgated by a body representing the people elicited two distinct responses from the *ulama*. The first line of reasoning defended constitutionalism. It argued that Islam was essentially constitutional due to its dependence on religious and civil laws. Since all temporal authorities are illegitimate in the absence of the hidden *Imam*, then a constitutional form of government that limits the arbitrary power of the ruler and grants the people limited sovereignty is preferable to other forms.<sup>100</sup> The second line of reasoning opposed constitutionalism. It argued that sovereignty belonged to God, the Prophet and his family, and during the period of occultation, to the *ulama*. The proponents of this argument sought to create a government based on *shari'a*, where Shi'ism would be fused with the monarchy and the *Majles* would be an extension of the *ulama*.<sup>101</sup>

In its attempt to appease the contradictory needs of different constituencies, the constitution contained a host of inconsistencies. It created a dual power structure by simultaneously authorizing the *Majles* and an ecclesiastical committee. The *Majles* had the power to promulgate laws, while the ecclesiastical committee had the authority to review all legislation for compatibility with Islam. Either the function of the ecclesiastical committee had to be suspended or the *Majles* had to become an impotent legislative body.

The constitution also contained ambiguity regarding popular sovereignty. It came close to accepting popular sovereignty by declaring in article 26 that the powers of the realm are derived from the people. However, the *Majles'* powers were limited by the

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<sup>100</sup> Ayatollah Khorasani, the leading *marja'-e taqlid* at that time supported this view.

ecclesiastical committee. People enjoyed certain freedoms, such as freedom of association and speech, but these freedoms were superseded wherever they conflicted with Islamic principles or threatened the tranquility of the system. Finally, article 35 stated that "Royalty (*saltanat*) is a trust confided, by the Grace of God, to the person of the King, by the nation (*mellat*)."<sup>102</sup> This article tried vainly to reconcile royalty, divine trust, and the nation. Since the constitution was silent on the source of the Shah's power, the question remained as to whether it emanated from God or from the people? The *ulama* represented God, and the *Majles* represented the people. Ultimately God's power was supreme because of the *ulama*'s veto power over the *Majles*.

Despite these ambiguities, and routine violations by the monarch during the greater part of Pahlavi rule in Iran (1926-1979), the constitution proved to be a success in the sense that it had to be acknowledged. Even though elections were frequently rigged, only on two occasions were emergency measures taken to close down the *Majles*.<sup>103</sup>

#### *The Constitution of the Islamic Republic and Velayat-e Faqih*

Following the revolution in 1979, Ayatollah Khomeini and certain members of the *ulama* were determined not to allow the intelligentsia to push them aside as they had done during the constitutional movement. Khomeini used his immense popularity to establish a theocracy with a constitution that ensured the propagation of Islamic

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<sup>101</sup> Milani, p 136. Similar arguments occurred during the drafting of the 1979 Constitution and are also reflected in contemporary Iranian discourse, which will be discussed in Chapter Three.

<sup>102</sup> C. Mozafari, "Authority in Islam" (New York; M.E. Sharpe, 1988) as cited in M. Milani's "Shi'ism and the State", in S. Farsoun and M. Mashayekhi, *Iran: Political Culture in the Islamic Republic*, (London, Routledge Press, 1992), p 137.

<sup>103</sup> M. Milani's "Shi'ism and the State", pp 137-8.

principles based on his concept of *velayat-e faqih*.<sup>104</sup> As mentioned earlier, central to Khomeini's discussion of *velayat-e faqih* were the tenets of an Islamic government, in which the jurist should act as leader.<sup>105</sup> The Constitution codified these principles, in keeping with Khomeini's concept, in three ways. First, it defined the state in Islamic terms and laid out Islamic principles and goals. Second, it bound legislation and law to Islamic law (*shari'a*). Third, it assured the rule of Islamic jurists.

In *Al-Hukuma al-Islamiya*, Khomeini argues that since there is tyranny and corruption in present day governments, it is incumbent on Muslims to strive to develop an Islamic government.<sup>106</sup> The Constitution reflects this intent in various ways. The Preamble begins by proclaiming that the cultural, social, economic, and political institutions of Iranian society are to be based on Islamic principles and norms, while Article 1 defines the form of government in Iran as that of an Islamic Republic. The Islamic nature of the state is further reinforced by the declaration that the official religion is Islam as interpreted by the *ja'fari* school of jurisprudence of the Twelver Shi'a.<sup>107</sup> Additionally, the Constitution requires that the President and members of the Consultative Assembly swear an oath to "protect the sanctity of Islam and guard the accomplishments of the Islamic revolution."<sup>108</sup>

The principles upon which the Islamic Republic is based are outlined in Article 2 of the Constitution as follows:

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<sup>104</sup>Ibid, p 138. For a detailed account of the power struggle and deliberations that preceded the publication of the 1979 Constitution, see Farsoun, pp 138-141 and Schirazi, pp 22-52. For a schematic of the state structure according to the 1979 Constitution, see appendix 1.

<sup>105</sup> See Chapter Two.

<sup>106</sup> Ruhollah Khomeini, *Al-Hukuma Al-Islamiya*, (Tehran, 1979), p 39.

<sup>107</sup> Another symbolic feature of the state's Islamic character is the addition of the inscription *Allah* (God) to the national flag.

<sup>108</sup> *The Constitution of the Islamic Republic of Iran*, (Tehran; Islamic Propagation Organization, 1979), pp 9, 18, 24, 39.

1. There is only one God, with exclusive sovereignty and the right to legislate laws, and man must obey His commands.
2. Divine revelation plays a fundamental role in determining the laws.
3. The resurrection plays a major role in the course of man's ascent towards God.
4. God's justice is manifest in His creation and His laws.
5. Continuous leadership (*imama*) plays a fundamental role in the progress of the Islamic revolution.
6. Man is endowed with dignity and nobility. His freedom requires responsibility before God.

These principles will ensure, through continuous legal interpretation (*ijtihad*) by Islamic jurists, that equity, justice, political, economic, social, and cultural independence, and national solidarity will be achieved. Furthermore, in keeping with Khomeini's belief that the Islamic state should not be restricted to territorial boundaries, but rather include all Muslims, Article 11 requires Iran to formulate policies that will allow all Muslims to form a single nation.<sup>109</sup>

The second way in which the Constitution reflects Khomeini's concept of *velayat-e faqih* is through the binding of legislation to Islamic law (*shari'a*). Khomeini argues that "the foundation of the government must be *shari'a*, which is based on the holy Koran and the *sunna* of the Prophet."<sup>110</sup> The provisions that bind legislation to *shari'a* begin with the preamble, which establishes the Constitution on Islamic principles and norms and requires that legislation for administering society revolve around the Koran and the *sunna*. Article 2 stipulates that divine revelation plays a fundamental role in setting forth laws, while Article 4 requires that all laws and regulations be based on Islamic criteria. In article 72 the Consultative Assembly is forbidden to pass laws which contradict the principles and ordinances of the state religion of the land. A similar restriction is placed upon local councils. The judiciary is obligated under Article 170 not

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<sup>109</sup> Ibid, pp 18-19, 22.

<sup>110</sup> Khomeini, pp 42-43.

to execute a statute or regulation that is in conflict with the norms of Islam. Finally, Articles 42-45, and 49 provide Islamic legal guidelines for economic activity ranging from property ownership to business practices.<sup>111</sup>

The third way in which the Constitution codifies *velayat-e faqih* is by guaranteeing the rule of Islamic jurists (*fuqaha*). Khomeini argues that since the ruler of an Islamic state must have total knowledge of Islamic law and total justice in carrying it out, only a just Islamic jurist (*faqih*) is fit to rule.<sup>112</sup> The preamble of the Constitution cites the Koranic verse 21:105, "Verily My righteous servants shall inherit the earth" and goes on to say that "accordingly, the exercise of meticulous and earnest supervision by just, pious, and committed scholars of Islam (*al-fuqaha' al-'udul*) is an absolute necessity."<sup>113</sup> In keeping with the principles of governance and the perpetual necessity for leadership, the Constitution provides for the establishment of leadership by a *faqih* possessing the necessary qualifications and recognized as leader by the people.<sup>114</sup> The qualifications for leadership as outlined in the Constitution include being upright, pious, God-fearing, and brave, as well as holding the office of "source of imitation" (*marja'-e taqlid*), and being qualified to deliver independent judgements on general principles (*fatvas*).

The heart of Khomeini's concept of *velayat-e faqih* is embodied in Article 5 of the Constitution, which stipulates that during the occultation of the hidden *Imam* the leadership of the Muslim people (*ummah*) devolves to the just and pious jurist (*faqih*).

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<sup>111</sup> The Constitution of the Islamic Republic of Iran, pp 9, 14, 20, 41, 66. For a list of explicit references made to Islamic ordinances within the articles of the 1979 Constitution see Schirazi's The Constitution of Iran (London; I.B. Taurus, 1997), p 11.

<sup>112</sup> Khomeini, pp 45-46.

<sup>113</sup> The Constitution of the Islamic Republic of Iran, p 14.

<sup>114</sup> *Ibid*, p 15.

The jurist must be courageous, resourceful, and be recognized and accepted as Leader by a majority of the people. If he enjoys such a majority as a source of imitation (*marja'-e taqlid*), he should be appointed Leader with all the powers of the ruler (*velayat-e 'amr*). In the event that no individual jurist enjoys a majority, then a council of jurists shall rule the Islamic Republic.<sup>115</sup> The power of the Leader or Leadership Council is delineated in Articles 57 and 110. Article 57 provides the Leader with general authority over the executive, legislative, and judicial branches of government, while Article 110 describes his powers in the following specific terms:

1. He appoints the jurists of the Guardian Council.
2. He appoints the Supreme judicial authority of the country.
3. He acts as Supreme Commander of the armed forces, exercised in the following manner:
  - a. Appoints and dismisses the chief of the joint staff.
  - b. Appoints and dismisses the chief commander of the Islamic Revolutionary Guards Corps.
  - c. Forms the Supreme National Defense Council, which is composed of the President, Prime Minister, minister of defense, chief of the joint staff, chief commander of the Islamic Revolutionary Guards Corps, and two advisors appointed by the leader.
  - d. Appoints the supreme commanders of the three branches of the armed forces, upon the recommendation of the Supreme National Defense Council.
4. He signs the decree formalizing the election of the President of the Republic by the people.
5. He has the authority to dismiss the President of the Republic in the interest of the country, if the Supreme Court finds him guilty of violating his constitutional duties, or if the National Consultative Assembly finds him incompetent.
6. He may pardon or reduce the sentence of convicts, within the framework of Islamic criteria, on recommendation from the Supreme Court.<sup>116</sup>

In addition to the position of Leader, the Constitution also reserves many other powerful positions in the government for Islamic jurists. For example, Article 91 calls for the creation of a Council of Guardians, which is composed of 12 members six of whom must be Islamic jurists. The responsibilities of the Council include reviewing all

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<sup>115</sup> Ibid, p 20.

parliamentary resolutions for conformity with *shari'a* and the right to veto any found to be contrary to Islamic principles. This dominant position over the legislature, along with the Council's power to interpret the Constitution, and screen candidates for elections makes it the second most powerful organ of government after the Leader.<sup>117</sup>

The members of the Assembly of Experts must also be Islamic jurists in accordance with Articles 107 and 108. The Assembly's powers include the authority to select and dismiss the Leader or Leadership Council.<sup>118</sup> Finally, in keeping with Khomeini's idea that judges in the Islamic state must be chosen from among the just Islamic jurists, the Constitution reserves membership to the Supreme Judiciary Council for Islamic jurists.<sup>119</sup> The Council is comprised of the chief of the Supreme Court, the Prosecutor-General, and three judges.<sup>120</sup>

#### The Revised Iranian Constitution of 1989

In April 1989 Ayatollah Khomeini ordered a revision of the 1979 Constitution, which he acknowledged contained many deficiencies.<sup>121</sup> The prime factor that had delayed the decision to revise the Constitution was the Iran-Iraq war, which broke out in September 1980. Critical discourse regarding *velayat-e faqih* and the Constitution was

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<sup>116</sup> Ibid, pp 36, 50.

<sup>117</sup> Ibid, pp 44-46.

<sup>118</sup> Ibid, p 49.

<sup>119</sup> Khomeini, p 76.

<sup>120</sup> Arjomand, p 151.

<sup>121</sup> "After a decade of sweet and bitter experiences of the Revolution, the great leader and the authorities of the Islamic Republic felt it necessary to incorporate certain amendments in it," "Foreword", Constitution of the Islamic Republic, p 6. Observers have noted that another reason for the revision of the Constitution may have been concern about Khomeini's successor. The original Constitution had been written very much with Khomeini in mind, but by 1989 Ayatollah Mohammad Montazeri, who Khomeini had designated as his successor in 1982, had been forced to resign and there was uncertainty about who would succeed Khomeini. For a schematic of the state structure of the Islamic Republic after the revision, see appendix 2.



suppressed for the duration of the war, which ended in August, 1988.<sup>122</sup> In accordance with Khomeini's order, a council was established to study eight topics, all selected by Khomeini himself. The topics included revising the existing constitutional provisions on leadership, centralization of authority in the executive, centralization of authority in the judiciary, centralization of management of the radio and television networks, the number of deputies in the consultative assembly (*Majles*) and its official designation as the Islamic consultative assembly, the role of the new discretionary council, and subsequent constitutional amendments.<sup>123</sup>

The most significant issue addressed in the revised Constitution, however, is the leadership issue. The requirement that the Leader be the source of imitation (*marja'-e taqlid*) is removed from Article 107. Article 107 also does away with the Leadership Council and instead, directs the Assembly of Experts to select one from among them if no other *faqih* meets the requirements for leadership.<sup>124</sup> The powers of leadership are thus concentrated in a single person. The Assembly of Experts gains broader power to dismiss the Leader under Article 111 whereby the leader can be dismissed "if it should become apparent that he had lacked some of the qualifications from the beginning."<sup>125</sup>

Under the new provisions, the article, stipulated in the 1979 constitution, stating that the *faqih* should enjoy the support of the decisive majority of the people is also removed. Furthermore, the provision that a Leadership Council of three to five jurists

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<sup>122</sup> Dilip Hiro, *The Longest War: The Iran-Iraq Military Conflict*, (New York; Routledge Press, 1991), pp 288, 296. For an account of the effect of the war on the domestic affairs of the Islamic Republic see Hiro's *The Longest War*, pp 52-70.

<sup>123</sup> Said Amir Arjomand, "Constitution of the Islamic Republic", in *Encyclopaedia Iranica*, vol VI, 1993, p 157.

<sup>124</sup> *The Constitution of the Islamic Republic of Iran*, p 69.

<sup>125</sup> Said Amir Arjomand, "Constitution of the Islamic Republic", in *Encyclopaedia Iranica*, vol VI, 1993, p 158.

should rule if no *faqih* enjoys majority popular support, is removed, thus doing away with the idea of collective leadership or power sharing. This move away from popular majority support and collective leadership is accompanied by an increase in the Leader's power.<sup>126</sup> Article 110 grants him the power to determine the general policies of the Islamic Republic, while Article 177 allows him to decide when the Constitution needs revision.<sup>127</sup>

Additionally, the Supreme Judiciary Council is done away with in favor of a single Chief Justice who is appointed for a 5-year term by the Leader.<sup>128</sup> The position of Prime Minister is removed and the President is given the authority to choose deputies and ministers, and to serve as chairman of the Supreme Council for National Security.<sup>129</sup> Taken together, the changes in the Leadership, Judiciary, and the Executive represent a significant centralization of power. Another significant change in the Constitution is the authority given to the Leader to establish the Exigency Council. When ordered to meet by the Leader, this body has the authority to arbitrate between the Majles and the Council of Guardians regarding legislation. In keeping with Khomeini's guidance the name of the *Majles* is changed to the Islamic consultative assembly, and a mechanism for future revision of the Constitution is established<sup>130</sup>.

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<sup>126</sup> Milani, "Shi'ism and the State", p 152.

<sup>127</sup> The Constitution of the Islamic Republic of Iran, (Tehran; Islamic Propagation Organization, 1990), pp 71, 101.

<sup>128</sup> Milani, p 151.

<sup>129</sup> The Constitution of the Islamic Republic of Iran, pp 79, 81, 99. The Supreme Council for National Security was formed soon after the outbreak of the Iran-Iraq war but was not codified until the Constitutional revision in 1989.

### Contradictions within the Constitution of the Islamic Republic

Despite the efforts of the *ulama* to develop a constitution that was fundamentally Islamic and which incorporated Shi'a principles of government, the Constitution of the Islamic Republic contains many secular and democratic elements. One cause of this was the adoption of the structure of the 1907 Constitution as the framework for the Islamic Constitution. Since the 1907 Constitution was based on the secular democratic Belgian Constitution, many of the ideas carried over into the 1979 and revised 1989 Constitutions.

A comparison of the 1907 and 1989 Constitutions shows that quite a few provisions from the former constitution were retained in substance, including those for equality before the law; guarantees of security of life, property, honor, and domicile; freedom of opinion and choice of profession; rights to due process and to privacy of communication; and the requirement for public deliberations of the *Majles* under normal circumstances, as well as parliamentary procedure and the definition of rights and responsibilities of the ministers vis-à-vis the *Majles*.<sup>131</sup> The other reason for the inclusion of secular and democratic ideas was the effort to accommodate the various groups of the ruling coalition after the 1979 revolution.<sup>132</sup> As a result of these two reasons, secular and democratic ideas are included in the Constitution that in some cases contradict its Islamic elements.

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<sup>130</sup> Milani, pp 152-3.

<sup>131</sup> Arjomand, "Constitution of the Islamic Republic", in *Encyclopaedia Iranica*, vol VI, 1993, pg 152. This reference also provides a comprehensive list of provisions carried over from the 1907 Constitution.

<sup>132</sup> For an account of the debate surrounding the development of the 1979 Constitution see, Schirazi, The Constitution of Iran: Politics and the State in the Islamic Republic, (London; I.B. Taurus Publishers, 1997), pp 22-30.

### *Democratic Concepts and Velayat-e Faqih*

Perhaps the most significant contradiction contained in the Constitution is that between the idea of popular sovereignty and the sovereignty of the Islamic jurists as defined by Khomeini's concept of *velayat-e faqih*. As discussed earlier, Khomeini's concept of *velayat-e faqih* is codified in the Constitution in various ways. The central idea is that political power emanates from God and is devolved from God to the Islamic jurists in the absence of the hidden Imam. The authority of the jurists to rule is therefore in no way dependent on the will of the people for its legitimization. This is contradicted by the provisions of the Constitution that declare the people as sovereign.

The Preamble of the Constitution declares that the founding of Iranian society on Islamic principles and norms represents "the earnest aspiration of the Islamic *ummah*."<sup>133</sup> Article 1 reinforces the view that the founding of the Islamic Republic should be traced to the will of the people. In accordance with this view it says that 98.2% of the Iranian people endorsed the choice of Islamic Republic in a popular referendum.<sup>134</sup> Article 6 also recognizes the sovereignty of the people by stating that "the affairs of the country must be administered on the basis of public opinion." Public opinion is to be expressed in the form of popular elections for the President, members of the *Majles*, and members of local councils. In addition, according to Article 108 the Assembly of Experts, which is responsible for selecting the Leader, is also a popularly elected body. This elected body also has the authority to remove the Leader if he is seen to lack the requisite qualifications.

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<sup>133</sup> The Constitution of the Islamic Republic of Iran, (Tehran, Islamic Propagation Organization, 1990), p 11.

<sup>134</sup> *Ibid*, p 25.

Article 7 highlights the point that popular sovereignty is not strictly a secular democratic concept, but that it has foundations in Islam as well. It stipulates that in accordance with Koranic verse 42:38 "Their affairs are by consultations among them", and verse 3:159 "Consult them in affairs", the consultative bodies such as the *Majles* and local councils are the decision making and administrative organs of the country.<sup>135</sup>

The idea of popular sovereignty vis-a-vis the government is expressed in Article 8 which directs that enjoining good and forbidding evil is a universal duty that must be fulfilled by the people with respect to the government.<sup>136</sup> Finally, Article 56 states that God alone has the absolute right to govern over the world and man, and that he delegates the right to rule to mankind. Furthermore, no one can deprive man of this divine right, nor subordinate it to the interests of a particular individual or group.<sup>137</sup> Accordingly, this God-given right is to be exercised by the people, not by the jurists.<sup>138</sup>

The people's ability to determine their own destiny through the elected organs of government is further contradicted through various constitutional mechanisms by the Leader and the Council of Guardians. The veto power of the Council of Guardians over legislation proposed by the *Majles*, and the power of the Council to screen candidates for elections provides it with extraordinary power over the will of the people. Particularly since the Council is not an elected body. The Leader's lack of accountability to the people also contradicts popular sovereignty. He is not required to swear an oath before

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<sup>135</sup> Ibid, p 29.

<sup>136</sup> Milani's "Shi'ism and the State", in S. Farsoun and M. Mashayekhi, Iran: Political Culture in the Islamic Republic, (London; Routledge, 1992), p 145.

<sup>137</sup> The Constitution of the Islamic Republic of Iran, p 49.

<sup>138</sup> M. Milani discusses the debate regarding popular sovereignty and velayat-e faqih, which took place between members of the Assembly of Experts during the drafting of the 1979 Constitution in "Shi'ism and the State", in S. Farsoun and M. Mashayekhi, Iran: Political Culture in the Islamic Republic, (London, Routledge, 1992), pp 145-148.

the *Majles*, nor must he respond to or appear before it. The Leader is accountable primarily to God.

The other democratic idea that contradicts Khomeini's concept of *velayat-e faqih* is individual rights. Chapter 3 of the Constitution, entitled "The Rights of the People", calls for equal rights without regard for color, race, language, or sex. Freedom of religion is protected to the extent that "no one may be molested or taken to task merely for holding a certain belief."<sup>139</sup> However, freedom to practice religion is restricted to state recognized religions, which are articulated in Article 13 as Islam, Zoroastrianism, Christianity, and Judaism.<sup>140</sup> Other individual rights protected under the Constitution include freedom of expression, freedom to form societies, parties, and professional associations, freedom of assembly, protection of privacy, protection from torture, and legal protection. With that said, the rights acknowledged in the Constitution are allowed only if they are not in contravention of Islamic law and principles.<sup>141</sup>

### *Secular Concepts and Velayat-e Faqih*

In *Al-Hukuma al-Islamiya*, Khomeini argues that Islamic government must be based upon *shari'a*, which is universal and possesses the vitality to solve all of mankind's problems in every time and place.<sup>142</sup> This belief forms the basis for the binding of legislation and government to *shari'a*, and for requiring the leadership of the state to be drawn from among those qualified to interpret it. Despite this argument the Constitution of the Islamic Republic contains many Western secular concepts that are alien to Islam

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<sup>139</sup> *The Constitution of the Islamic Republic of Iran*, p 35.

<sup>140</sup> *Ibid*, p 32.

<sup>141</sup> Schirazi, pp 16-17.

<sup>142</sup> Khomeini, pp 10, 42,43.

and *shari'a*, not the least of which is the idea of a constitution. There are others such as sovereignty of the people, nation, legislature, judiciary, parliament, republic and elections. These ideas are drawn from a political system that has its own set of norms, values, institutions, and procedures, which are unknown to the *shari'a*.<sup>143</sup> The idea of a nation with a government that is separated into three branches, each with its own institutions and powers with rules that govern their interaction had to be borrowed from Western secular models.

The inclusion of secular ideas into Shi'a thought began during the Constitutional Revolution of 1906-1911. In fact there were members of the Shi'a *ulama'* who sought to integrate some of these ideas into their writings. For example, Ayatollah Mohammad Hosayn Na'ini wrote a classic work on government in 1909, in which he sought to use a modern conceptual framework and adapt Shi'a law to modern forms of the state.<sup>144</sup> Na'ini defended constitutionalism on the basis that since all governments are illegitimate during the absence of the Hidden *Imam*, a constitutional government that limits the arbitrary power of the monarch is less abhorrent than other forms.<sup>145</sup> But Khomeini's concept of *velayat-e faqih* does not share the same thinking as Na'ini. Rather, the proponents of *velayat-e faqih* admire the work of Na'ini's opponent during the Constitutional Revolution, Shaykh Fazlollah Nuri, who advocated Islamic legalism and

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<sup>143</sup> Schirazi, p 18.

<sup>144</sup> Ibid, p 19.

<sup>145</sup> Ayatollah Shariatmadari, who was the head of the Shi'a *ulama* in Iran prior to Khomeini's return shared Na'ini's support for constitutionalism. For more see S. Farsoun's Iran: Political Culture in the Islamic Republic, p 149.

rejected constitutionalism, separation of government powers, equality, legislation, and freedom of the press as anti-Islamic.<sup>146</sup>

Not only have the secular and Islamic elements of the Constitution of the Islamic Republic not been reconciled, but they have been included in the same document in such a way that they contradict one another. As has been discussed, the sovereignty of the Islamic jurist contradicts the sovereignty of the people; the Council of Guardians reduces the power of the *Majles*; the Leader constrains the President, and Islamic regulations and principles supersede people's rights. Moreover, the Islamic community is set against the Iranian nation. An example of this is in the Preamble, Articles 5 and 109, which emphasize the Islamic community, whereas the Preamble and Article 41 stress the idea of the Iranian nation.<sup>147</sup>

#### *The Division of Religious and Political Authority*

The change to Article 107 of the Constitution, which dispenses with the requirement that the Leader be the source of imitation (*marja'-e taqlid*), creates another contradiction. The position of Leader within the Islamic Republic is now a political position legitimized on religious grounds. In his concept of *velayat-e faqih*, Khomeini argues that in the absence of the Hidden *Imam*, the right to rule devolves to the Islamic jurists. If one is found to possess total knowledge of *shari'a* and the ability to apply it with total justice, more so than his peers then he should govern.<sup>148</sup> The implication of being selected by consensus as "the most learned" and "the most righteous" is that this

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<sup>146</sup> Schirazi, p 19. For more information regarding the ulama's positions during the Constitutional Revolution see M. Milani's "Shi'ism and the State", in S. Farsoun and M. Mashayekhi, *Iran: Political Culture in the Islamic Republic*, (London; Routledge Press, 1992), p 136.

<sup>147</sup> *The Constitution of the Islamic Republic of Iran*, pp 11, 29, 41, 70.



Islamic jurist (*faqih*) should be the *marja'-e taqlid*<sup>149</sup>. Indeed, this is the interpretation of *velayat-e faqih* that was codified in the 1979 Constitution of the Islamic Republic. Article 107 of the 1979 Constitution says,

"Whenever one of the *fuqaha* possessing the qualifications specified in Article 5 of the Constitution is recognized and accepted as *marja'* and Leader by a decisive majority of the people....he is to assume the office of the *velayat-e 'amr*."<sup>150</sup>

In the event that no *faqih* met the qualifications, then a Leadership Council would be established to govern, thus maintaining the tradition of consultation among the *fuqaha*.

The revised Constitution does away with the Leadership Council<sup>151</sup>, and concentrates significant political power in a single *faqih*, even though he may not be a *marja'*. Since the Constitution no longer requires that the Leader be a *marja'-e taqlid*, it opens the possibility that temporal and religious rule may not be concentrated in the hands of one supreme leader, as was required under the 1979 Constitution. By removing the requirement of *marja'* from the leadership, the revised Constitution contradicts Khomeini's interpretation of *velayat-e faqih*, which states,

"If one such (*faqih*) succeeds in forming a government, it is incumbent on the others to follow him..."<sup>152</sup>

Implicit in Khomeini's argument is the notion that the Leader shall enjoy the support of the other *fuqaha* in executing his duties, and shall be 'the most learned' and 'the most just'. Therefore, one could argue that the elimination of the *marja'iyat* from the *velayat-e faqih* represents a new dualism of political and religious authority.<sup>153</sup> If so

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<sup>148</sup> Khomeini, pp 51-52.

<sup>149</sup> For a discussion of the position of *Marja'-e taqlid* see, A. K. S. Lambton, "A Reconsideration of the Position of the Marja' al-Taqlid." *Studia Islamica*, 20, 1964, pp 119, 121-135.

<sup>150</sup> *The Constitution of the Islamic Republic of Iran*, p 49.

<sup>151</sup> Except where such a council is necessary for short periods during national emergency.

<sup>152</sup> Arjomand, 178.

<sup>153</sup> Said Amir Arjomand, "Constitution of the Islamic Republic", in *Encyclopaedia Iranica*, vol VI, 1993, p 158.

it reduces the legitimacy of the Islamic government based on Khomeini's idea of *velayat-e faqih* by allowing for the possibility of the division of temporal and religious leadership.

### Conclusion

The Constitution of the Islamic Republic of Iran is a document which reflects the history of constitutionalism in Iran, as well as the diverse interests of the groups who participated in the Revolution of 1979. As such, it represents the interests of the revolutionary *ulama'* who became the dominant group within the ruling coalition following the 1979 Revolution. Accordingly, it codifies Ayatollah Khomeini's notion of *velayat-e faqih* by defining the state in Islamic terms; by binding legislation to *shari'a*; and by assuring the rule of Islamic jurists. At the same time it retains such secular and democratic ideas as constitution, sovereignty of the people, the branches of government, and elections.

In certain cases the secular and democratic elements of the Constitution have not been satisfactorily reconciled with its Islamic components. The idea of popular sovereignty is contradicted by the pre-eminence and lack of accountability of the Leader and Council of Guardians, while the obligation to conform to Islamic principles contradicts the concept of fundamental rights of the people. In addition to the conflict between the secular/democratic and Islamic elements, I have tried to demonstrate that a contradiction exists within the Islamic nature of the Constitution. Khomeini's notion of *velayat-e faqih* and the obedience it calls for to the position of Leader is contradicted by the fact that the title of highest religious authority, or *marja'-e taqlid*, is no longer a

prerequisite for the position of Leader. Allowing for, at least in theory, the division of temporal and religious leadership.

To a great extent, the contemporary political discourse in Iran revolves around the issues described above. In fact, one could argue that the contradictions within the Constitution provide the legal space for the ongoing debate. The following chapter addresses the discourse concerning the nature of the Islamic Republic by evaluating the arguments and proposals of three prominent Iranian thinkers.

### Chapter 3

#### **The Challenge to the Concept of *Velayat-e Faqih***

*"a necessary prerequisite to democratization of religion is to make religious thought more flexible by elevating the role of reason in it; and that is not individual but collective reason, arising from the participation of all and benefiting from humanity's experiences; and this is made possible only through democratic means."*

– Abdolkarim Soroush<sup>154</sup>

Since the Islamic Revolution in 1979, Iranian intellectuals have engaged in several debates concerning topics of fundamental political importance. In the decade since the end of the Iran-Iraq war and the death of Ayatollah Khomeini, however, the forum for debate has expanded. More importantly, a trend has emerged, probing the nature of an Islamic Republic. The questions at issue include: What is the role of religion in politics? Is Islam compatible with democracy? Is there such a thing as a final interpretation of Islam? What should Iran's relationship be with the West? Has the experience within the Islamic Republic since 1979 demonstrated a need for reform within the clerical establishment? These issues, some of whose answers are codified in various articles of the Constitution in a contradictory manner, are being discussed in an increasingly public forum. The nature of this forum deserves some mention.

The number of journals and other publications in Iran has increased significantly in the post-Khomeini era, and especially since May 1997 with the election of Mohammad Khatami. Many of these publications have tested the limits of public debate on cultural, social, and even political issues. Despite closures and disruptions, the journals have succeeded in expanding the realm of the public debate to include sensitive issues that

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<sup>154</sup> Abdolkarim Soroush, *Farbeh tar az ide'olozhi* [More Corpulent than Ideology] (Tehran; Serat, 1994), p 280, as cited in Afshin Matin-asgari, "Abdolkarim Soroush and the Secularization of Islamic Thought in Iran", in *Iranian Studies*, vol 30, numbers 1-2, Winter/Spring 1997, p 95.

concern the nature of the Islamic Government, society, and the relationship between the two. While this study does not assess the extent to which the ongoing discourse has permeated Iranian society, the actions of the government, such as closures and arrests of editors and writers, highlight the sensitive nature and potential power of the ideas being discussed.

This chapter seeks to outline the positions of three prominent Iranian thinkers in order to determine what ideas are being put forth in response to the questions posed above. The three persons selected come from among the revolution's early enthusiasts, who have in time developed a more critical perspective of the Islamic government and its ideology of *velayat-e faqih*. They are all devout Muslims and intellectuals who enjoy a significant audience in Iran. The first is Abdolkarim Soroush, perhaps the most prominent lay-religious intellectual in Iran. The second is Mohammad Mojtabeh-Shabestari, a prominent and respected member of the Shi'ite *ulama*. The third is Mohsen Kadivar, a brilliant young cleric who is currently in prison for his outspoken critique of the status quo in the Islamic Republic.<sup>155</sup> While in some cases the conclusions they reach are similar, the perspectives from which they approach the issues vary in each case. The primary sources for this chapter are *Kiyan*, and *Rah-e Now*, journals whose audience is primarily religious Iranian intellectuals.

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<sup>155</sup> In an interview with the author in June 1999, Mohammad Mahallati, former Iranian Ambassador to the U.N. and visiting professor at Princeton, referred to Mohsen Kadivar as "the future of the Iranian clergy". This statement was made in reference to Kadivar's position regarding the clerical establishment and the government, which is discussed later in this chapter.

### Abdolkarim Soroush

Abdolkarim Soroush has been engaged in the dynamic discourse regarding the nature of the Islamic Republic since the revolution in 1979. He is a prolific writer who has widely published in Persian, and whose ideas are attracting increasing international attention. A limited biographical sketch is provided here as background for the development of his ideas.<sup>156</sup>

Soroush, whose real name is Farajollah (or Hosayn) Dabbagh, attended a prominent religious secondary school in Tehran. His early university training was based in the natural sciences. He studied pharmacology at Tehran University, then completed his doctorate in analytical chemistry in England. During his stay in England he began studying the philosophy of science, which marked a turning point in his intellectual development.<sup>157</sup> It was this engagement with philosophy that would later provide the point of departure for his evaluation of religion and its role in society.

During the early years of the Islamic Republic, Soroush served as an ideologue of the new regime, defending it against its critics, especially Marxists. He served as a member of the Advisory Council of the Cultural Revolution, where his responsibilities included the revision of academic curricula to ensure their compliance with Islamic principles.<sup>158</sup> In 1987 he resigned from the Council amidst disagreements over its purpose and effectiveness. In 1992 he established the Research Faculty for the History and Philosophy of Science at the Research Institute for the Humanities in Tehran, of

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<sup>156</sup> For more complete biographical information on Abdolkarim Soroush, see Afshin Matin-asgari, "Abdolkarim Soroush and the Secularization of Islamic Thought in Iran", in *Iranian Studies*, vol 30, numbers 1-2, Winter/Spring 1997, p 96-100, and Mahmoud Sadri, "The Soroush Interview: Travelers on One Ship", in *The Iranian*, May 1999 (journal on-line); available from <http://www.iranian.com/BTW/1999/May/Soroush/index3.html>; internet, 4 May 1999, and Robin Wright, "Letter from Tehran", in *The New Yorker*, November 8, 1999, pp 45-47.

<sup>157</sup> Mahmoud Sadri, "The Soroush Interview: Travelers on One Ship".

which he continues to be a research fellow, as well as a member of the Iranian Academy of Sciences. His grounding in traditional Islamic teachings together with a high level of Western academic training in science and philosophy make him a formidable scholar. His credentials as a devout Muslim and participation as an "insider" in the post-revolutionary political process provide him with a defense against those who question his faith in Islam and the Islamic Republic.<sup>159</sup> Such attacks are frequent since his ideas on politics and religion are very controversial in contemporary Iran.

Soroush argues for reform in key social and political arenas. His proposition rests on the belief that no understanding of Islam is ever final or complete, and that therefore one cannot speak of an official Islamic political ideology. That religion and politics are closely related in religious countries does not mean that religion should be reduced to a means of legitimizing political ends. Equally, the *ulama* cannot be regarded as the "official interpreters" of religion, and remain subservient to the government; instead there should be extensive reforms of the clerical establishment. In short, rather than ruling through an official religious ideology with the clergy serving as ideologues, religious states must become democratic. To this end, cultural dialogue between Iran and the Western world is a necessity.<sup>160</sup>

As alluded to earlier, Soroush's point of departure for his study of religion and politics is his philosophical understanding of the nature of human knowledge. He differentiates between the unchanging truths of religion and man's understanding of

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<sup>158</sup> Afshin Matin-asgari, "Abdolkarim Soroush and the Secularization of Islamic Thought in Iran", p 97.

<sup>159</sup> Ibid, p 100.

<sup>160</sup> Valla Vakili, Debating Religion and Politics in Iran: The Political Thought of Abdolkarim Soroush, (New York, Council on Foreign Relations, 1996), pp 7-8.

religion.<sup>161</sup> He designates the latter as a field of human knowledge no different in terms of its nature from that of science. He argues, "Religion is people's understanding of divinity, just as science is people's understanding of nature."<sup>162</sup> So while many contemporary Muslim thinkers espouse "reconstructing" or "reviving" Islam in order to meet the needs of modern man and society, Soroush takes a different view.

He accepts that change in the modern world is constant, and that there is a need to reconcile the changes in the external world with the immutability of religion. Islam is unchangeable, and any attempt to adjust it is futile. However, it is not Islam that must be changed, but the human understanding of Islam.<sup>163</sup> In other words, Muslims should seek to reconcile the changes in the modern world with their understanding of Islam. This requires a conception of religion that allows for the inevitability of change in human understanding of religion. Since religious knowledge is not divine or fixed, Soroush treats it as one of many branches of human knowledge.

Furthermore, Soroush describes various factors that influence one's interpretation of religious knowledge. In Iran, for example, religion is interpreted by scholars engaged in the study of the unchanging core texts of Shi'ite Islam, such as the Koran, Hadith, and teachings of the Imams. The scholars use a variety of methods to interpret these texts, including inferential logic, rules of Arabic grammar, Aristotelian philosophy, and

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<sup>161</sup> Soroush became involved in the post-revolutionary debate between advocates of traditional and dynamic jurisprudence. In a series of articles entitled "The Theoretical Contraction and Expansion of Shari'a", he argued in favor of dynamic jurisprudence, which takes into account the other fields of human knowledge. This led to a broader debate over the epistemological nature of religious knowledge. For a summary of the debate see Mehrzad Boroujerdi, *Iranian Intellectuals and the West: The Tormented Triumph of Nativism* (Syracuse; Syracuse University Press, 1996), pp 166-167 and Soroush *Qabz va Bast-e Teorik-e Shari'at* [The Theoretical Contraction and Expansion of Shari'a], (Tehran, Mo'aseseh-ye Farhang-ye Serat, 1990).

<sup>162</sup> Sadri, "The Soroush Interview: Travelers on One Ship", p 17.

<sup>163</sup> Soroush, *Qabz va Bast-e Teorik-e Shari'at*, p 99, as cited in Vakili, p 10.



contemporary hermeneutics.<sup>164</sup> The scholar of religion also possesses a certain worldview, which is determined not only by his study of religion, but by his understanding of other fields of knowledge in the natural and social sciences. This worldview results in an interpretation that is bound to the era in which it is made. As Soroush puts it, "Religious knowledge is created by the application of the "knowledge of the day" to the study of the core religious texts."<sup>165</sup> Finally, Soroush advocates an environment where there is a continuous dialogue between religious and non-religious branches of human knowledge, and where various interpretations of religious knowledge are rationally debated.

After defining religious knowledge as he does, and advocating an environment where free rational discourse is encouraged, Soroush turns to a critique of the political and social factors that are obstacles to expanding religious knowledge.

### *Islam as an Ideology*

According to Soroush, the use of religion as ideology is one of the major obstacles to the growth of religious knowledge.<sup>166</sup> He defines ideology as a social and political instrument used to determine and direct public behavior. In his view, it consists of a systematized and ordered school of thought that situates itself as a guide to action, and serves as a determining factor in people's social, political, and moral positions.<sup>167</sup> However, in order to serve as an effective guide it must be easily comprehensible to the

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<sup>164</sup> Vakili, p 10.

<sup>165</sup> Soroush, *Qabz va Bast-e Tiorik-e Shari'at*, p 262 as cited in Vakili, p 11.

<sup>166</sup> Vakili, p 13. For a full account of Soroush's ideas regarding religion as ideology see Abdolkarim Soroush, "Farbeh-tar az Ideolozhi", *Kiyan* 3, no. 13 (1993), pp 2-20. For a critique of his view see Jahangir Salehpur's "Naqdi bar Nazariyah-ye Farbeh-tar az Ideolozhi", *Kiyan* 3, no. 15 (1993), pp 47-49.

<sup>167</sup> Soroush, "Farbeh-tar az Ide'olozhi", *Kiyan* 3, no. 13 (1993), p 4, as cited in Vakili, pp 13-14.

public, and more often than not it is defined in opposition to another ideology. Although Soroush acknowledges the mobilizing power of Islamic ideology and is convinced of its role, as that formulated by Dr. Ali Shariati, in bringing about the 1978-9 revolution, he rejects it even for revolutionary ends for reasons that will be discussed below.

The reason for his rejection lies in the nature of ideology and its effect on religion. In situating itself against a rival ideology and interpreting the world based on this rivalry, religious ideology reduces the complexity of religion to a fixed ideological worldview.<sup>168</sup> In a recent interview Soroush concluded that, "ideologization of religion binds it to a single interpretation."<sup>169</sup> He argues rather that Islam must be open to constant reinterpretation and therefore cannot be made ideological. Revelation allows for ambiguity of meaning, thus making the same religion adaptable to different societies and historical circumstances.<sup>170</sup>

Soroush also addresses the shortcomings of religious ideology from the perspective of an ideological government. He argues that a government that rules through an official ideology has all the problems described above, as well as additional obstacles to the growth of religious knowledge. In order for the government to develop and maintain an ideological platform, it must have a cadre of government-allied ideologues, whose task it is to formulate and defend the ruling ideology. In a government with a religious

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<sup>168</sup> Soroush, "Din, Ide'olozi, va ta'bir-e ide'olozi az din" [Religion, Ideology, and the Ideological Interpretation of Religion], *Farhang-e tawse'eh* 1, no.5, 1993, p 12, as cited in Vakili, pp 13-14.

<sup>169</sup> Sadri "The Soroush Interview: Travelers on One Ship", p 24. Mohammad Shabestari and Mohsen Kadivar share Soroush's opinion regarding the ideologization of religion. Their positions are addressed later in this chapter.

<sup>170</sup> Soroush, *Farbeh-tar az ide'olozi*, pp 95-155, as cited in Afshin Matin-asgari, "Abdolkarim Soroush and the Secularization of Islamic Thought in Iran", p 104.

ideology, the task falls to government-allied interpreters of religion.<sup>171</sup> Therefore religion is reduced to a legitimizing ideological base and a servant of the government.

In Soroush's opinion, the fixed and official nature of Iran's religious ideology and the existence of government-allied religious ideologues present the greatest obstacle to the growth of religious knowledge. Furthermore, they represent a danger to the development of a religious society. Soroush outlines the deep contrast between these two societies:

"In an ideological society, the government ideologizes the society, whereas in religious societies, the society makes the government religious. In an ideological society, an official interpretation of ideology governs, but in a religious society, there are prevailing interpretations but no official interpretations. In an ideological society, the task of the formulation of ideology is relegated to the ideologues. In a religious society, however, the issue of religion is too great for it to be relegated solely to the hands of the official interpreters. In a religious society, no personality, and no *fatva* is beyond criticism. And no understanding of religion is considered the final or most complete understanding."<sup>172</sup>

Soroush's rejection of religious ideology undermines the legitimacy of the government of the Islamic Republic by suggesting that Ayatollah Khomeini's notion of *velayat-e faqih* as codified in the Constitution must not be above criticism.<sup>173</sup> Article 2 and 107 of the Constitution, which stipulate the Islamic nature of Iran, the central role of *fiqh* in determining laws and legislation through continuous *ijtihad*, and the unquestioned leadership by a just *faqih* provide examples of the "ideologization of religion" to which Soroush refers.<sup>174</sup> He proposes the rejection of the ideologization of religion in favor of a dynamic interpretation of religious knowledge open to interaction with developments in

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<sup>171</sup> Soroush, *Farbeh-tar az ide'olozi*, p 13 as cited in Vakili, p 15.

<sup>172</sup> Ibid, p 17.

<sup>173</sup> In addition to rational critiques of his ideas, Soroush has been threatened and harassed for his views. For Soroush's protest to the government regarding the disruption of his lectures, see his letter in *Kiyan*, 6, no. 30, 1996, p 48.

all branches of human knowledge. In discussing the problems of religious ideology in government he also refers to the negative impact of the class of official interpreters that it generates. This is developed to a more complete critique of the *ulama* and religious institutions.

### *The Clerical Establishment*

Sorush's idea that no interpretation of Islam is final leads him not only to a rejection of Islam as ideology, but to an evaluation of the institution that claims a near monopoly on the interpretation of religious knowledge. He identifies methodological problems in the approach of the seminaries to the teaching of religious knowledge. Additionally, he argues that the *ulama's* relationship to the centers of power in Iran preclude the proper development of religious knowledge. He argues that accruing income through religious activity may lead to a compromise in the integrity of religion, therefore individuals who pursue such activity should derive their livelihood from another source. This leads him to conclude that only by divorcing religious activity from any sort of power can the development of religious knowledge occur without potential corruption. Sorush's conclusion therefore undermines the institutional linkages among the clerical establishment, the seminary, and the state.<sup>175</sup>

The traditional methodology for teaching religious knowledge in the seminaries has been to present the fundamentals as principles beyond questioning. Sorush argues that students should be free to raise wide-ranging questions about all texts. Just as modern universities teach critical theories and models of knowledge open to question, so

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<sup>174</sup> For a more complete discussion of the codification of Khomeini's *velayat-e faqih* in the Constitution of the Islamic Republic see, Chapter Two, pp 22-25.

too should the seminaries stress the human nature of religious knowledge and the questioning of it.<sup>176</sup> Soroush acknowledges the distinction made in the seminaries between the core religious texts and those that are fallible. However, he points out that the teachings of certain religious scholars are unnecessarily counted among the core texts. He attributes this to the teacher's and student's lack of distinction between religious knowledge and religion itself. This results in the elevation of certain scholarly texts to the level of the core religious texts, thus removing them from the realm of criticism.<sup>177</sup>

Soroush's argument ultimately denies any final interpretation of religion by treating religious knowledge as a branch of human knowledge, not divine and ever changing by nature. His argument also undermines the power of any group to dominate the study of religion by calling for a variety of methods in the pursuit of religious study. The seminary becomes one among many centers for religious learning, and the clerical establishment one among many groups of religious interpreters.<sup>178</sup> The political implications of his argument thus become obvious: the *ulama* should hold no special position in the political system since they are not the sole interpreters of Islam. If the nature of religious knowledge is fluid and open to interpretation by all rational people, then the *ulama* and the *foqaha* (Islamic jurists) have no inherent privilege in the political arena.

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<sup>175</sup> Vakili, p 36.

<sup>176</sup> Matin-asgari, p 106.

<sup>177</sup> Abdolkarim Soroush, "Entezarat-e daneshgah az Hawzeh" [The University's Expectations of the Seminary], *Salam* (5 January 1993), p 5, as cited in Vakili, p 30. For a critique of Soroush's position see Nasir Makarem-Shirazi, "Beh Aqideh-ye Man Majmu'eh-ye in Sukhanraniha 'Avvam-zadegi-ye Ajibi-Ast", [In My View This Series of Lectures is Extraordinary Demogoguery], *Salam*, (5 January 1993), pg 8.

<sup>178</sup> Valla Vakili *Debating Religion and Politics in Iran*, pg 31.

Change such as that called for by Soroush is strongly opposed by the vast majority of the *ulama*.<sup>179</sup> Hostility towards Soroush runs deep, for his ideas threaten the solidarity and fundamental structure of the clerical establishment. A broader range of critical thinking extending to many traditional methods and texts means that the status quo within the seminaries would no longer enjoy unquestioned legitimacy. Rather, teaching methods, texts and many traditions would be open to critique and change from within the establishment. In total, Soroush's criticisms represent a significant challenge to the institutional structure of the clerical establishment.<sup>180</sup>

In addition to reform within the seminaries, Soroush points out the need to sever the ties between the seminaries and the government. Since the government of the Islamic Republic is ruled by members of the *ulama*, the seminaries where they are trained may feel obliged to promote the theories that support the religious government. Soroush makes this point by saying,

"...rather than guiding and criticizing the ruler, the seminaries will offer opinions and issue *fatvas* that meet the rulers' tastes, or they will close the door to debate concerning various theoretical issues. If in the seminaries, for example, the right to discuss the issue of *velayat-e faqih* is not exercised, and opposing and supporting opinions are not freely exchanged, this is an indicator of a problem that must be removed."<sup>181</sup>

Soroush is also critical of the relationship between religious activity and financial gain. He argues that "the clergy are not defined by their erudition or their virtue but by

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<sup>179</sup> There are several notable exceptions including Mohammad Mojtabeh-Shabestari and Mohsen Kadivar, whose arguments are evaluated later in this chapter.

<sup>180</sup> In the interview with Mahmoud Sadri, "Travelers in One Ship", Soroush describes the classes he taught on modern theology and philosophy of religion at the Qom seminary as very popular with the students. Despite the fact that he has since been denied permission to teach there, his former students are publishing several journals that perpetuate the critical discourse regarding modern theology and philosophy of religion.

<sup>181</sup> Soroush, "Entezarat-e daneshgah az Hawzeh", p 5, as cited in Vakili, p 33.

their dependency on religion for their livelihood.”<sup>182</sup> In his opinion this relationship is the most pervasive problem facing the clerical establishment. Despite the institutional controls that the *ulama* have to promote high standards of conduct, Soroush argues that religion must be removed entirely from the income/status equation. He concludes that only by separating religion from social, political, and economic power, can religious knowledge become free of potentially corrupting influences. As he puts it, “religion must exist for religion’s sake, not for financial income, political power, or social status/esteem.”<sup>183</sup>

In place of the present establishment, Soroush calls for a society of religious scholars. Such a society would be comprised of individuals who pursue religious study out of a sincere desire to understand religion better and to spread the understanding of religion among the public. Soroush cites the Prophet and the Imams as examples of such sincere individuals.<sup>184</sup>

Soroush’s critics have asked how a government in a religious society can remain religious without direct clerical involvement in the government. His answer lies in the relationship between the “society of religious scholars” and public religious consciousness, and will be discussed below.

### *The Nature of Islamic Government*

By rejecting Islamic ideology and advocating reform in the clerical establishment, Soroush argues that the best way to maintain society’s faith is not by imposing it from

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<sup>182</sup> “The Soroush Interview: Travelers on One Ship”, p 21.

<sup>183</sup> Soroush, “Horriyat va Ruhaniyet” [Freedom and Clericalism], *Kiyan* 4, no. 24 (1995), p 6 as cited in Vakili, p 33.

above and by advancing a single interpretation of Islam as the "truth" in order to legitimize a government. Rather, he contends that the best way is from below, through the continuous reinterpretation of Islam by religious activists who form the society of religious scholars. This argument ultimately leads him to favor a democratic form of government. Such a stance, inevitably, puts him in the uncomfortable position of clashing with an Islamic government based on Khomeini's *velayat-e faqih*.

Soroush argues that any discussion concerning religious government should first take place within the broader framework of rational theology (*kalam*), rather than the more narrowly defined juristic framework of Islamic jurisprudence (*fiqh*). *Kalam* concerns matters such as free will versus determinism, punishment and reward, the relationship between reason and revelation, and the politics of the application of divine rule to the community.<sup>185</sup> While *fiqh* is the legal process by which one determines what is allowed and what is forbidden in terms of actions, based on Islamic Law (*shari'a*). In other words, *kalam* concerns the broader nature of belief, while *fiqh* relates to determining the appropriateness of practice.<sup>186</sup>

Soroush critiques Khomeini's concept of *velayat-e faqih* by contrasting its juridical (*fiqh*) argument for religious government with an argument based on rational theology (*kalam*). From the juridical point of view, the opinions of high Islamic jurists (*foqaha*) should define the nature of the religious government, just as Khomeini's interpretation of *velayat* shaped the form of government in the Islamic Republic. Soroush rejects a

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<sup>184</sup> Ibid, pp 8-9.

<sup>185</sup> Parviz Morewedge, "Theology", The Oxford Encyclopedia of the Modern Islamic World, vol 4 edited by John L. Esposito, (Oxford; Oxford University Press, 1995), p 214.

<sup>186</sup> For a more thorough discussion of *fiqh* and *kalam* see, Parviz Morewedge, "Theology", The Oxford Encyclopedia of the Modern Islamic World, vol 4 edited by John L. Esposito, (Oxford; Oxford University Press, 1995), pp 214-224, 245-246, and Norman Calder, "Law", The Oxford Encyclopedia of the Modern Islamic World, pp 450-456.



religious government based on juridical authority because it defines the source of its own legitimacy. He argues that politics is outside the domain of jurisprudence. Instead, politics is related to rational theology, which is able to deal with issues outside of religion, such as human rights. These rights include people's expectation that religion will be in accordance with justice and allow for freedom to choose in government. To say that people's rights are limited to juridical rights, or that they are determined by a *faqih* leads to unjust government.<sup>187</sup>

"The question of religious justice is a question for *fiqh*, but the question of a just religion is a question for *kalam*."<sup>188</sup> He argues that a religious government must be just and that justice is determined outside of religion. While religious justice, defined as the application of *shari'a*, is derived from the Koran based on *fiqh*, the broader concept of justice must take into account extra-religious concepts such as man, humanity, and human rights. This conception must accord with religion but cannot be derived from religious texts alone. "We do not draw our conception of justice from religion, but rather we accept religion because it is just."<sup>189</sup> Soroush advocates the use of *kalam* to determine the relationship between justice and religion. Such an approach would demonstrate that man enjoys certain extra-religious prerogatives, and that if a government limits its understanding of justice to *fiqh* then it jeopardizes these rights.

In addition to the right to govern, Soroush argues that a government whose rule is based on *fiqh* lacks the methodological tools necessary to function properly. He argues that since religion does not contain a plan for government, any such plan cannot be legitimized as religious. Instead, the rational administration of modern society requires

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<sup>187</sup> Soroush, *Farbeh-tar az Ide'olozi*, pp 49-52, as cited in Matin-asgari, p 109.

<sup>188</sup> *Farbeh-tar az Ide'olozi*, p 50, as cited in Vakili, p 18.

methods that are derived from modern social sciences, such as economics, sociology, and public administration. While these methods must not violate religious values, they cannot be procured from religion.<sup>190</sup>

While Soroush is critical of the greater role given to *fiqh* within the Islamic government, he does not reject the idea of a religious leader (*faqih*). He maintains only that such a leader must be accountable to the people. He also differentiates between leadership and administration in the state. While the *faqih* may lead the state successfully, he cannot administer it on the basis of *fiqh* alone. Any attempt to limit the administration of the state to the realm of *fiqh* results in an ideological state, for such a state must necessarily perpetuate an official interpretation of Islam that legitimizes the importance of *fiqh*. The need for such an interpretation in turn would require the creation of a class of ideologues, all of which is harmful to the growth of religious knowledge in society.

The rejection of a government based solely on *fiqh* does not mean that Soroush rejects Khomeini's concept of *velayat-e faqih* outright. His primary concern is that it has been misinterpreted as a jurisprudential theory, rather than understood within a theological context. As Soroush points out, "the debate concerning *velayat-e faqih* is outside the scope of *fiqh*, because the questions of prophecy and Imamate are theological (*kalami*), not jurisprudential (*fiqhi*), ones. Therefore the theory of *velayat-e faqih* as a theory of governance must be debated in the realm of theology, prior to jurisprudence."<sup>191</sup>

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<sup>189</sup> Ibid, p19.

<sup>190</sup> Ibid.

<sup>191</sup> Soroush, "Tahlil-e mafhum-e Hokumat-e dini", [Analyzing the Concept of Religious Government], *Kiyan* 6, no. 32, (1996), p 2, as cited in Vakili, pp 20-21.

## *Islam and Democracy*

Soroush's critique of Islamic government rejects the use of a single interpretation of Islam as a legitimizing ideology. He argues that such an ideological government corrupts religion and religious men alike. Furthermore, a government whose rule is based solely on *fiqh* is not just, limits the extra religious rights of mankind, and lacks the tools to govern effectively. Soroush argues that the only just system of government for a religious society is a democratic one. He sees no conflict between Islam and democracy, because unlike many in Iran, he does not associate democracy with a particular western culture. Rather, he places democracy in the realm of extra-religious concepts such as human rights, which are applicable to and reconcilable with Islam:

"I have observed that if we can reconcile Islam with revolution, why not reconcile it with human rights, democracy, and liberty? After all, revolution is an extra-religious concept as well. The reason is that our clergy are unfamiliar with these concepts, and their training has not prepared them to appreciate those traits."<sup>192</sup>

For Soroush, a democratically elected government in a religious society cannot be irreligious, since it reflects the values of society. In order for a government to be both religious and democratic, it must uphold the sanctity of religion and human rights. In his evaluation Soroush clearly places human rights above any interpretation of religion as the guiding criteria for governance.<sup>193</sup> Unlike an ideological government, which depends on the acceptance of its ideology for legitimacy, a government that is elected by the popular will of the people remains legitimate as long as it reflects the wants of its citizens. As society's view of religion and the world changes, the laws based on religion and other branches of knowledge change as well. This allows for the development of religious

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<sup>192</sup> "The Soroush Interview: Travelers on One Ship", p 27.

knowledge based on the genuine religious sentiment of the society, rather than an imposed religiosity, which emphasizes the external aspects of religion at the expense of spirituality.

In addition to serving as a value system that respects human rights and the notion of popular sovereignty, democracy also provides a method of governance. As such, democracy provides for the separation of powers, elections, freedom of expression, and independent press, freedom of assembly, multiple political parties, and restrictions on executive power. Many of these democratic elements are reflected in the constitution of the Islamic Republic based on Iran's encounter with democracy, which began in the early twentieth century.<sup>194</sup>

Soroush argues that the threat to a religious society does not come from democratic government, but rather from the loss of concern for religion at the individual and public levels. Individuals must choose to be religious. Should they choose otherwise, no government, whether an irreligious democratic one or one based on an Islamic ideology, could forcibly make them religious.<sup>195</sup>

The religious nature of the state cannot be determined on the basis of the degree to which its institutions reflect some aspect of religion. Rather, it is the level of religious consciousness within society that determines the degree to which a state's nature is religious. A method for strengthening religious consciousness, he argues, is to promote change in religious knowledge. This is accomplished through the actions of religious

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<sup>193</sup> Soroush elaborated on the idea of "obligation versus rights" during a lecture at Princeton University in November 1998, during which he argued that the current form of government based on *velayat-e faqih* favors the idea of obligation to the official interpretation of Islam over the rights of man.

<sup>194</sup> For a more detailed discussion of the Iranian encounter with democracy see Chapter Two and Mohsen Milani, "Shi'ism and the State in the Constitution of the Islamic Republic of Iran", in S. Farsoun and M. Mashayekhi's *Iran: Political Culture in the Islamic Republic*, (London, Routledge, 1992), pp 133-135.

<sup>195</sup> Vakili, p 23.

activists, who are part of a "society of religious scholars"<sup>196</sup> Soroush identifies Ali Shariati, Mehdi Bazargan, Ayatollah Khomeini, and Ayatollah Motahhari as examples of this type of religious activist. The free and lively debate regarding the various interpretations would serve to guarantee the continued religious consciousness of society, which would in turn require that government remain congruent with religious values.<sup>197</sup>

Having established the case, Soroush, however, points out that the establishment of democratic government and reform of clerical institutions alone are not enough to ensure the continued growth of religious knowledge. As will be discussed in the next section, cross-cultural interaction is another necessary element.

### *Relations with the West*

In arguing that religious knowledge can grow only when engaged in a dialogue with the non-religious fields of human knowledge, Soroush points out that human knowledge is not restricted by political boundaries. Rather, developments in one country must go beyond the borders of that country to influence the greater body of scholarly thought. Therefore, the development of religious and non-religious knowledge in Iran can only occur when engaged in a cross-cultural scholarly dialogue.<sup>198</sup>

Soroush begins his discussion regarding relations with the West by addressing the notion of *gharbzadegi*, or "weststruckness". The famous Iranian writer and critic Jalal Al-Ahmad (1923-1970) coined the term *gharbzadegi* to describe the condition, which he

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<sup>196</sup> As discussed earlier these religious scholars pursue the study of religion out of a sincere desire to learn and share religious knowledge.

<sup>197</sup> Vakili, pp 37-38.

<sup>198</sup> Vakili, p 39. For Soroush's position regarding the relationship between religious and non-religious fields of knowledge within the context of the cultural revolution see, "'Ulum-e ensani dar Nezam-e daneshgahi", [The Humanities in the University System], in *Tafarroj-e son'*: *Goftahayi dar maqalat-e akhlaq va san'at va*

considered to be the source of Iran's social and cultural problems. Al-Ahmad described this condition as the abandonment of traditional heritage and submission to, and superficial imitation of Western ways without any understanding of the roots of Western progress.<sup>199</sup>

Within the contemporary discussion of *gharbzadegi*, Soroush identifies two trends. The first argues that any borrowing from the West is wrongful imitation and advocates a return to tradition. The second describes the West's cultural dominance as a matter of unfortunate fact of modernity. Soroush rejects them in turn. He argues that the first view considers the West as a single entity, which must be accepted or rejected as a whole. Instead, he suggests that one should selectively accept and reject aspects of Western achievement. He contends that those who hold the second view of *gharbzadegi* are misreading history.<sup>200</sup> Since no culture is ever "complete" or "final", but rather changing over time, he argues again for selective borrowing from Western culture. Such free and open cultural interaction can only benefit Iranian culture.

Soroush argues that modernity, like the West, should not be viewed as a unified entity.<sup>201</sup> Viewed as a variety of developments and achievements, these elements can then be selected or rejected by developing cultures. Soroush rejects the notion that the only path to development lies in the replication of the Western model. Instead, he insists that various aspects of modernity can be adapted to a variety of cultures. The starting

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elm-e ensani [The Pleasure of the Creative Power: Essays on Ethics, Arts and Human Sciences], pp 198-199.

<sup>199</sup> A. Gheissari, *Iranian Intellectuals in the Twentieth Century*, (Austin; University of Texas Press, 1998), p 88. For more regarding the notion of *gharbzadegi* see Gheissari, pp88-92.

<sup>200</sup> In Soroush's opinion such a reading of history presumes the existence of an irresistible historical force that has placed the West in a dominant and Iran in a subservient position. He points out that such a view also suggests that Western culture is fully developed and has proven its hegemony, while Iranian culture is also fully developed and has proven weak.

<sup>201</sup> Gheissari, p 41.

point for such cross-cultural interaction is the rational, conscious, and selective engagement of foreign cultures and concepts.<sup>202</sup>

### *Conclusion*

By rejecting any single interpretation of Islam as definitive, Soroush finds Islamic ideology and any government founded upon it to be baseless and a threat to the development of religious consciousness in society. He argues that a religious government must be just and respect human rights. The ideal form of government for guaranteeing human rights is democracy. A democratic government also ensures that social religious consciousness is allowed to flourish through the debate over various interpretations of Islam. The crucial component in freeing the interpretation of religion, even in a democracy is the extensive reform of the clerical establishment. Lastly, the development of culture and religious and non-religious knowledge depends on a rational selective engagement with modernity and Western cultures.

While Soroush's academic development began in the hard sciences and philosophy, later turning to the study of religion, Mohammad Mojtabeh-Shabestari is a product of the Shi'ite seminary system and respected member of the *ulama*. If Soroush's critiques are those of a former political insider, Mojtabeh-Shabestari's represent a sample of a self-critique from within the clerical establishment.

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<sup>202</sup> Ibid, p 42.

Hojjatolislam Mohammad Mojtahed-Shabestari

Born in Tabriz in 1936, Mojtahed-Shabestari graduated from the Qom seminary after eight years of rigorous study. Fluent in English, German, and Arabic, he spent the nine years prior to the revolution serving as the director of the Islamic Center of Hamburg, West Germany. For a brief time in 1979 he published a high-quality bi-weekly entitled *Andisheh-ye Eslami* [Islamic Thought], and has published a series of essays over the past decade regarding the role of the natural and social sciences in Islamic thought, the nature of interpreting Islam and the limitations of *fiqh*. He is currently a professor of theology at Tehran University and a member of the Iranian Academy of Sciences.<sup>203</sup>

Mojtahed-Shabestari argues for key political and social reforms. He bases his case on the premise that no religion possesses the necessary tools to govern. Therefore, religious ideology used to legitimize clerical rule is a construct without religious foundation that limits the development of religion in society. By deconstructing the current official reading of Islam it becomes clear that the role of *fiqh* in government is limited. Critical analyses of religious knowledge and the application of modern social sciences and philosophy by the clerical establishment should lead to the realization that Islam cannot be the basis for government in the modern age. Rather, only by freeing religious interpretation from the prison of ideology can a religious society develop. Furthermore, he argues that modern Muslim life, which is characterized by progress and development, requires scientific solutions to society's problems and public participation based on rational collective reasoning in a democratic form of government. Finally,

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<sup>203</sup> Mehrzad Boroujerdi, Iranian Intellectuals and the West: The Tormented Triumph of Nativism (Syracuse, Syracuse University Press, 1996), p 168.



Muslims must engage Western fields of knowledge rationally and selectively in order to ensure progress and development in Muslim society.<sup>204</sup>

Mojtahed-Shabestari's point of departure is the idea that in Islam, only fundamental religious values should be thought of as timeless.<sup>205</sup> The path to determining those values lies in the deconstruction (*shaludeh shekani*) of religious thought in order to differentiate between the essential and non-essential elements of Islam.<sup>206</sup> Islam, after all, is a real manifestation, and one must seek its ontological elements. Religious scholars must then reconcile the immutable essence of Islam with the evolving external circumstances of the contemporary world, which include the modern fields of human knowledge.

Once he establishes the need to deconstruct religious knowledge in order to determine the essential truth of Islam, Mojtahed-Shabestari turns to a critique of the factors that serve as obstacles to such thought.

### *Islam as Ideology*

According to Mojtahed-Shabestari's argument, which is informed by Western fields of knowledge and philosophy as well as Islamic thought, Islam as ideology is one of the most significant obstacles to freeing religious thought. He disagrees fundamentally with Ayatollah Khomeini's notion of *velayat-e faqih*, which claims that Islam contains the necessary elements to govern society.<sup>207</sup> Khomeini's claim that Islam possesses political, economic, and legal systems made possible by Islamic jurisprudence, with

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<sup>204</sup> Mohammad Mojtahed-Shabestari's interview in *Rah-e Naw*, vol. 1, no. 19, ??? 1999, p ?.

<sup>205</sup> Ashgar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic*, (London, I. B. Tauris, 1997), p 279.

<sup>206</sup> Mojtahed-Shabestari in *Rah-e Naw*, vol. 1, no. 19, 7 Shahrivar 1377/29 August 1998, p 7.

which people can live, remains unproven. Islam, as it is known through its historical development, cannot provide such rule because no religion is capable of doing so, not because it is deficient in any way. The claim simply is not applicable to the realities of Muslim society today. Rather, the ability to plan, legislate, and institutionalize development and progress, which is a key function of modern government, is a technical and scientific matter for which Islam and *fiqh* are not equipped. Therefore, the ideological slogan that religious administration is possible in today's world is not logical and the fact that such regimes do not exist is not a short-coming of Islam or any other religion.<sup>208</sup>

The construction of an 'official' interpretation of Islam to legitimize Islamic government serves to ideologize religion. The result of such ideologization is the imprisoning of minds in an ideological world and the freezing of Islam in a past context, which has little to do with true Islam.<sup>209</sup> Following a line of reasoning similar to Soroush, Mojtabeh-Shabestari rejects the use of Islam as ideology because it stifles religious interpretation and is harmful to the religious nature of society. By rejecting the official interpretation of Islam as codified in the Constitution, Mojtabeh-Shabestari undermines the legitimacy of the Islamic government founded on Khomeini's doctrine of *velayat-e faqih*.<sup>210</sup> The attack on the Islamic Republic's legitimacy is made all the more credible in that the critique comes from a respected member of the *ulama*. Unlike Soroush, however,

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<sup>207</sup> Ruhollah Khomeini, *Al-Hukuma Al-Islamiya*, [Islamic Government], (Tehran, 1979), p 9.

<sup>208</sup> Mohammad Mojtabeh-Shabestari's interview in *Rah-e Now*, vol. 1, no. 19 p 4.

<sup>209</sup> Ibid, p 5.

<sup>210</sup> As an example of the ideological nature of the Constitution, the Preamble of the 1989 Constitution states that "the mission of the Constitution is to realize the ideological objectives of the movement". For more see *The Constitution of the Islamic Republic of Iran*, (1990), pp17-18.

he advocates the pursuit of religious knowledge by the clerical establishment, while at the same time recommending reforms in seminary methodology.

### *The Clerical Establishment*

After demonstrating that the key to resolving the crisis of stagnation in religious interpretation is the rejection of an official reading of Islam, Mojtabeh-Shabestari turns to a critique of the clerical establishment. Seminary students are not encouraged to critique certain texts and decisions, such as Khomeini's *velayat-e faqih*. Rather, these notions are presented as given and beyond reproach. This contributes to the continuous construction of a religious interpretation that is not grounded in the present context, but in the past. Only by promoting a constant state of investigation and critical analysis is it possible for the *ulama* to differentiate between the essential elements of Islam and those that are not.<sup>211</sup> This process of deconstruction allows religious scholars to break the historical molds in order to reach the essence of the sacred texts and apply them to the contemporary context.<sup>212</sup>

In addition to identifying the immutable truths of Islam, the *ulama* must engage in other fields of human knowledge, such as the modern sciences, philosophy, and literature, in order to facilitate the progress and development of modern Muslim society. In a candid criticism of the educational curriculum of Iran's theological seminaries, Mojtabeh-Shabestari argues,

"The fact that our *howzehs* have separated their path from that of the social sciences and are minding their own business without any awareness of the developments in these disciplines has brought us to the present condition in which we have no philosophy of

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<sup>211</sup> Ibid, p 7.

<sup>212</sup> Ibid. Mojtabeh-Shabestari points out that the historical criticism of sacred texts is constructive for believers, rather than negative.

civil rights or philosophy of ethics. Furthermore, we have neither a political nor an economic philosophy. Without having a set of solid and defensible theories in these fields, how can we talk of universal or permanent laws and values? How can we even gain admission to international scientific communities?"<sup>213</sup>

By promoting critical thinking regarding religious thought and engaging with all areas of human knowledge, the *ulama* can bring about a very important role for religion in society and attribute true religious meaning to life.<sup>214</sup> While Soroush calls for a fundamental restructuring of the clerical establishment and severing its ties to power, Mojtabeh-Shabestari urges reform in the methodology and content of the seminary curriculum. Implicit then, in his argument, is a continued active role for the *ulama* in Islamic society, but as we shall see below, a reduced role in governance.

### *The Nature of Islamic Government*

Mojtabeh-Shabestari argues that while religion and politics are related, Islam should not dictate the form of the government. Furthermore, due to the technical and scientific nature of modern government, the role of *fiqh* in politics is limited. He advocates a shift in the focus of the clergy from one of governance to one of nurturing religious feeling in Muslim society. This ultimately leads him to favor a democratic form of government, like Soroush and Kadivar. He begins by demonstrating the inherently limited role of religion in contemporary politics.

Even in the early period of Islamic history, where Islamic law played a significant role in governing society, there were still large parts of Muslim life that were controlled

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<sup>213</sup> Mehrzad Boroujerdi, *Iranian Intellectuals and the West: The Tormented Triumph of Nativism* (Syracuse, Syracuse University Press, 1996), p 168. Mojtabeh-Shabestari is joined in his critique of the seminaries by Mohsen Kadivar whose views are elaborated upon later in this chapter.

<sup>214</sup> Mojtabeh-Shabestari, p 4.

by secular law (*urf*) and custom.<sup>215</sup> Over the past 150 years the form of Muslim life has changed significantly. Secular laws and systems have become more important in achieving progress and economic, social, political and cultural development. This new way of life, according to Mojtaheh-Shabestari, is achieved through application of the natural sciences on the one hand, and the philosophy of rights, morals, and politics, and the social sciences on the other hand.<sup>216</sup>

While the context of Muslim life has changed, the interpretation and application of Islam and Islamic Law have not. An example of the new context is the adoption of democratic principles in Iran, such as those embodied in the Constitution in the form of the three branches of government, popular elections, and emphasis on individual rights.<sup>217</sup> Despite the presence of such democratic elements, the present official interpretation of Islam is based on a past historical context, and seeks to discuss the circumstances of the administration of this new way of life in the juristic language of what is allowed and what is forbidden. "It seeks to specify what the government should and shouldn't do in a case where the governance of this new Muslim way of life is completely beyond the scope of Islamic jurisprudence."<sup>218</sup>

Rather, he maintains that the Koran and the *Sunna* actually emphasize the 'values of government' and not the actual 'forms of government'. Since managing a society requires science and planning, he proposes to entrust the task to those who are qualified, such as economists and politicians. This would leave the *fuqaha* to promote the values

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<sup>215</sup> Ibid, p 2.

<sup>216</sup> Ibid.

<sup>217</sup> The democratic elements of the Constitution are discussed in ch. 1, pp 2-4,13-16.

<sup>218</sup> Mojtaheh-Shabestari, p 2.

found in the Koran and the *Sunna*.<sup>219</sup> Mojtabeh-Shabestari concludes that the system of government cannot be determined based on Islamic jurisprudence.

To illustrate the limitations of *fiqh* in governance, one may look to the body of articles and laws passed since the Islamic revolution in 1979.<sup>220</sup> Rather than the execution of Islamic government in keeping with *fiqh*, they resemble more what governments around the world are doing in administering the business of the nation. Furthermore, the duties specified in the Constitution for the various organs of government do not represent the execution of Islamic judgements by any acceptable definition drawn from *fiqh*. Rather, these duties represent the efforts of the Assembly of Experts to extrapolate a framework of governance from within the confines of Khomeini's ideology of *velayat-e faqih*.<sup>221</sup> Mojtabeh-Shabestari concludes that these duties have little to do with the Koran and the *Sunna*. Having demonstrated the inadequacy of *fiqh* as a framework for government, he turns to the effects of a *fiqh*-based, ideological government on Islamic society.

According to Mojtabeh-Shabestari, "the domination of *fiqh* over religion is equivalent to taking the soul of religion and draining the feeling, experience, and message from it." Like Soroush, he argues that a religious society cannot be imposed externally, but must be nurtured from within. Like Kadivar, he argues that the *ulama* have the means to bring religious meaning to the new Muslim way of life by freeing the

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<sup>219</sup> Boroujerdi, p 169. This point is similar to Mohsen Kadivar's argument, which calls for the *ulama* to serve as supervisors of the government in order to ensure Islamic values are respected, but not as the actual rulers. Kadivar's views on this subject are discussed later in this chapter.

<sup>220</sup> For examples of such articles see "Chapter 4: Economy and Financial Affairs" in The Constitution of the Islamic Republic of Iran, (Tehran; Islamic Propagation Organization, 1989), pp 42-48.

<sup>221</sup> For example, Article 110 of the revised Constitution, which outlines the duties of the Leader, calls for him to delineate the general policies of the Islamic Republic, assume supreme command of the armed forces, and pardon or reduce sentences of convicts. For more see The Constitution of the Islamic Republic, pp 71-72.

interpretation of Islam from its ideological state and promoting spirituality.<sup>222</sup> Furthermore, the progressive and developmental nature of the new Muslim way of life, is also characterized by anxiety and worry. He argues that religion provides stability and direction to society within this new way of life. Additionally, religious belief influences the process of development, so that it occurs in a positive fashion.<sup>223</sup>

According to Shabestari, contemporary Muslim life is characterized by progress and development. The governance of this new way of life requires technical and scientific organization, which is beyond the scope of *fiqh*. The rejection of *fiqh* as the basis of government amounts to an implicit rejection of Khomeini's doctrine of *velayat-e faqih*. Furthermore, the effect of legitimizing religious government by codifying Khomeini's doctrine amounts to the construction of an ideology, which is without basis or truth. Shabestari urges the clergy to promote critical reasoning within the religious seminaries. Unlike Soroush, Shabestari sees an important role for the clerical establishment in the development of Muslim society. However, the role he envisions does not advocate clerical rule bound to the interpretation of Islam articulated by Khomeini. Rather, the *ulama* should serve to nourish religious sentiment in society, which is then reflected in the government.

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<sup>222</sup> This is contrary to Soroush's argument, which sees the clerical establishment itself as an impediment to the spreading of religious knowledge in society.

## *Islam and Democracy*

In order for Muslim society to achieve the progress and development to which Shabestari refers, it is not enough to reject an official reading of religion and pursue the essence of religion through critical analysis of religious knowledge.<sup>224</sup> The study of other fields of human knowledge, such as the natural and social sciences, and philosophy, must be promoted in a free society. If this is done it will become apparent that there are areas of man's existence outside of religion, such as science, philosophy, and human rights, all of which are crucial to the development of society.

According to Shabestari, the most important function of government is the scientific administration of the process of development and progress.<sup>225</sup> The ideal form of government to ensure such progress is a democratic one. He argues that rational legislation based on the relevant fields of human knowledge, such as politics, economics, and sociology, should facilitate the progress and development which the people desire. Indeed, only laws based on such a process and within the framework of the Constitution should serve to legislate the progress and development of modern society.

While religion cannot determine the process of development, he holds that the process can benefit from religion. By promoting a free religious dialogue in society, the *ulama* promote religiosity among the people, which is in turn reflected in the government. The influence of religious belief among the people, and as a result within the government, will reduce the anxiety associated with development and allow society to flourish.

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<sup>223</sup> Mojtabeh-Shabestari, p 5.

<sup>224</sup> Soroush holds a similar view.



### *Relations with the West*

Mojtahed-Shabestari traces the problems of engaging the modern fields of human knowledge to the Muslim encounter with the West and modernity. He draws parallels between the way Christianity and Islam each encountered modernity. As a result of the contemplative encounter with modern science and philosophy, the Catholic and Protestant traditions were able to produce such celebrated thinkers as Karl Barth (1886-1968), and Rudolph K. Bultman (1884-1976). By contrast much of the Muslim world, fearing cultural and political colonization, rejected Western ideas. Mojtahed-Shabestari argues that this rejection has led to the state of intellectual lethargy in the Muslim world, leaving it unable to confront the challenges of modern science and philosophy.<sup>226</sup> Like Soroush, he advocates a selective and critical engagement of Western ideas. Such a rational approach to Western ideas, rather than the rejection of the West as a whole, will allow for a productive exchange of ideas that will enrich the intellectual traditions of all concerned.

### *Conclusion*

By rejecting any official reading of Islam as an ideological construction, Mojtahed-Shabestari finds a government based on such an ideology to lack theoretical foundation and legitimacy. As such, he implicitly rejects the Islamic government founded on Khomeini's *velayat-e faqih* on the grounds of its ideological nature.<sup>227</sup> His argument suggests that by deconstructing religious knowledge the true essence of Islam

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<sup>225</sup> Mojtahed-Shabestari, p 5.

<sup>226</sup> Mojtahed-Shabestari, as cited in Boroujerdi, p 169.

can be found. By doing so, he argues that the limited role of religion in politics will become clear. He characterizes the new Muslim way of life as being one of progress and development, which requires scientific administration that is beyond the scope of *fiqh*. Such administration requires democratic government in order to ensure public political participation, based on collective reasoning. The Islamic nature of the government will be guaranteed through the nourishing of religious feeling in society by the *ulama*. Finally, he maintains that the lack of satisfactory development in modern fields of study stems from the wholesale rejection of the West, and instead calls for a rational, more nuanced engagement of Western ideas.

While Mojtabeh-Shabestari has been criticized for his views by the clerical establishment, he has so far avoided official charges of disloyalty to the late Ayatollah Khomeini and the revolution. On the other hand, the next religious intellectual we will discuss, Mohsen Kadivar, has been taken to task for his outspoken criticism of the political status quo in Iran. In 1999 he was found guilty by a Special clerical court and imprisoned.

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<sup>227</sup> For an example of the ideological nature of the government called for in the Constitution and based on Khomeini's velayat-e faqih, see "Preamble", The Constitution of the Islamic Republic of Iran, (Tehran;

Mohsen Kadivar

Of the three Iranian thinkers discussed in this chapter, Mohsen Kadivar represents what is perhaps the most significant threat to the status quo in Iranian politics. Unlike Soroush and Shabestari, whose experiences were shaped by life under the monarchy, Kadivar is more a product of the Islamic Republic. He is a young scholar with superb academic and religious credentials earned in post-revolutionary Iran. His critique is all the more cutting in that its perspective is that of a 'son of the revolution'.

After beginning his studies in the natural sciences at the University of Shiraz, where he obtained a degree in Electrical Engineering, Kadivar undertook religious studies at the Shiraz and Qom Seminaries. It was in Qom that his studies of *fiqh* brought him under the tutelage of Ayatollah Montazeri. Upon completion of his seminary work, he pursued Islamic Studies at the University of Qom, then at the University of Tehran. His studies included philosophy, Islamic theology, as well as human rights and the application of *fiqh* in the political sphere.<sup>228</sup>

Fluent in Arabic and English, Kadivar has published articles in a variety of journals, as well as several books. One of his works entitled 'Views of the State in Shi'ite Jurisprudence: Political Thought in Islam', is now in its second printing in Iran. He has also taught philosophy at various institutions, including Imam Sadeq University, the University of Qom, and the Teacher Training College in Tehran. He is perhaps best known in the West for the article published in the *Khordad* newspaper, in which he criticized the government for failing to achieve the goals of the revolution and for

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Islamic Propagation Organization, 1990), p 14.

<sup>228</sup> Zahra Ravady Kadivar, *Baha-ye Azadi: Defaiyat-e Mohsen Kadivar dar dadgah-e vizheh-ye rohaniyat* [The Price of Freedom: The Defense of Mohsen Kadivar in the Special Clerical Court], (Tehran; Nashr-e nay, 1998), pp 19-20.

continuing many of the policies of the Shah's regime. The publication of this article resulted in his trial, conviction, and imprisonment at the hands of a Special Clerical Court.<sup>229</sup>

Kadivar calls for the separation of the institutions of religion and politics. He bases his argument on the notion that when religious authority is combined with political power, the result is the politicization of religion and oppressive government. Acting independently of government, the *marja'iyat* (sources of religious imitation) and *howzehs* (religious seminaries) must serve as supervisors over government and society.<sup>230</sup> By doing so, the religious institution spreads religion in society while limiting the potential for corrupt government. He argues that in order for a religious government to be legitimate, it must pursue religious goals and enjoy the support of a majority of the religious people in society. This leads him to conclude that the ideal system for a religious government is democracy. Finally, he points out that there is no inherent conflict between religion and modernity. Rather, through rational and selective engagement with the West, Muslim society can learn much in the fields of philosophy, social and hard sciences, while imparting much in the way of ethics and mysticism.<sup>231</sup>

### *Islam as Ideology*

According to Kadivar, the greatest threat to Muslim society is the joining of religious and political power. He argues that this combination causes religion to be used to legitimize political ends. As a result, politics is not made more religious, but rather

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<sup>229</sup> Ibid, p 21.

<sup>230</sup> Mohsen Kadivar, "Howzeh va hokumat" [The Seminary and the Government], *Rah-e Now* [New Way], vol. 1, no. 2, 12, Ordibehesht 1377/2 May 1998, p 2.

religion is politicized.<sup>232</sup> The politicization of religion results in the slow erosion of religious feeling in society until such time as only the shell of external practices remains, with the core of religion having become secularized. Kadivar therefore rejects the use of Islam for ideological purposes.<sup>233</sup>

In addition to the effect of the ideologization of religion on the spirituality of society, there is the effect of freezing religious interpretation in time. Kadivar rejects the notion that Islam is unchanging and applicable to all times.<sup>234</sup> Like Soroush and Mojtabeh-Shabestari, he advocates the distinction between core texts, and other judgments that are bound to a past context. Implicit in Kadivar's argument is the idea that Khomeini's concept of *velayat-e faqih* should fall into the latter category of religious knowledge and therefore be open to criticism and debate.

Another reason for his rejection lies in the effect of religious ideology on society and government. By using religion as an ideological tool, the political undertakings of rulers, and even the rulers themselves, are somehow sanctified and placed beyond the scope of popular criticism. A society without criticism, he argues, will stagnate and eventually decline. Furthermore, an ideological government that is not accountable to the public is not constrained to function within the framework of the law, which opens the possibility of religious oppression.<sup>235</sup>

The detrimental effect of Islamic ideology on religion in society, and the potential for autocracy in an ideological state lead Kadivar to call for the separation of religious

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<sup>231</sup> Mohsen Kadivar, "Goftogu ba Mohsen Kadivar" [An interview with Mohsen Kadivar], *Khordad*, (1998), p 4.

<sup>232</sup> Kadivar describes the difference between "religious politics" and "political religion" in an interview with *Khordad*, (1998), p 4.

<sup>233</sup> Kadivar, "Howzeh va hokumat" [The Seminary and the Government], *Rah-e Now* [New Way], p 4.

<sup>234</sup> Kadivar, *Khordad*, p 4.

<sup>235</sup> *Ibid*, p2.

and political institutions. He argues, "a state reading of religion, therefore, is not the correct path. Rather, the only way to protect the integrity of both religion and politics is to keep the two institutions separate. It is clear, however, that the separation of the institution of religion from that of politics is not the same as the separation of religion and politics."<sup>236</sup> After making this distinction, Kadivar turns to a critique of the clerical establishment and its role in politics and society.

### *The Clerical Establishment*

While Kadivar reaches a similar conclusion to that of Soroush and Mojtabeh-Shabestari regarding the nature of Islam as ideology, his argument prescribes very different reforms for the clerical establishment.<sup>237</sup> The point of departure for Soroush's argument is that the development of religious knowledge occurs best in an environment where people are free to debate competing interpretations, without constraint. In this line of reasoning, he finds the clerical establishment to be an impediment to the development of religious knowledge.<sup>238</sup> Kadivar sees things differently. For him, the nature of the problem lies in the power relationship between the government and the seminaries. Once the institutions of politics and religion are separated, he suggests a supervisory role for the clerical establishment and outlines its duties to government and society.<sup>239</sup>

According to Kadivar, religious seminaries have two types of duties. The first kind remain constant regardless of the government or period, which include the

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<sup>236</sup> Ibid, p5.

<sup>237</sup> Soroush, Mojtabeh-Shabestari, and Kadivar share the opinion that Islam as ideology has a destructive effect on the religious nature of society, and that an ideological government is ill suited for governing modern Muslim society.

<sup>238</sup> For a more complete discussion of Soroush's views on the clergy and religious knowledge see the section on Soroush earlier in this chapter.

protection of religious knowledge, the training of religious learned men, and spreading religion in society. The second type are specific to the government of a particular period. The duties of the clerical establishment to a contemporary religious government should include the following:

1. The role of the seminary should be supervisory, both over the government and society. This would serve to ensure that the goals of the government are high religious ones. Such supervision also would ensure that laws are compatible with *Shari'a*. The nature of this supervision should be such that the government welcomes it.
2. The *ulama* should focus on deep theoretical questions, leaving the government to pursue the day to day practical matters of governance.
3. The seminaries should provide qualified members of the *ulama* to undertake the few duties within the government which require religious training, such as judges.
4. The clerical establishment must not allow religious oppression to occur in the name of religious government.
5. In times of political difficulty, the clerical establishment should serve as a stabilizing force in society, while at the same time ensuring that domestic oppression and foreign imperialism are not allowed.<sup>240</sup>

Although Kadivar's critique rejects Khomeini's concept of *velayat-e faqih* on the grounds that it combines religious and political power, it clearly provides for a significant role by the clerical establishment in supervising politics. In addition to its role vis-a-vis the government, Kadivar also suggests that religious feeling in society must be nurtured and that it is the responsibility of the clerical establishment to promote such religiosity. After calling for the separation of the religious institution from that of politics and suggesting the duties of the seminary to the government and society, Kadivar turns to a discussion of the responsibilities of a religious government and its nature.

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<sup>239</sup> Soroush also suggests that the ties between the seminaries and the government be severed. However he disagrees with Mojtabeh-Shabestari and Kadivar regarding the role of the clerical institution in society.

### *The Nature of Islamic Government*

Kadivar argues that while religion and politics are related, the institutions must remain separate. He advocates a shift in the focus of the clergy from one of governance to one of supervision of the government and nurturing religious feeling in Muslim society. Furthermore, due to the technical and scientific nature of modern government, the role of *fiqh* in politics is limited. This ultimately leads him to favor a democratic form of government, like Soroush and Mojtabeh-Shabestari. He begins by demonstrating the inherent danger of combining religious and political institutions.

Despite the overthrow of the monarchy during the 1979 revolution, Kadivar argues that many despotic tendencies remain in the Islamic Republic.<sup>241</sup> For example, the Shah's regime was overthrown because it was perceived to be above the law and not answerable to the people. Today there are those in the Islamic government who claim that rulership is only under the supervision of God, rather than answerable to the law and the people. Kadivar argues that this is simply a continuation of the Shah's system.<sup>242</sup> He attributes this legacy to the fact that religious and political institutions have been combined, thereby ideologizing religion to legitimize the government. The solution begins with the separation of the government from the clerical establishment. Kadivar then suggests a different definition for religious government.

Kadivar defines an Islamic government in terms of two criteria. The first is that the government must be dedicated to religion, and the second, that it must reflect the desires of the majority of religious people in society. According to this definition, he

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<sup>240</sup> Kadivar, "Howzeh va hokumat" [The Seminary and the Government], *Rah-e Now* [New Way], pp 1-2.

<sup>241</sup> Comparing Iran's religious government to the "taghuti" government of the Shah was arguably the most inflammatory comment made by Kadivar in the interview with *Khordad*, for which he was imprisoned.



rejects the current government in the Islamic Republic. In order for the government to be dedicated to religion and enjoy the support of a majority of religious people in society, he suggests the development of a religious society. Outward manifestations of religion, such as the call of the muezzin from mosques and the veiling of women are meaningless if the people lack religious belief in their hearts. The clergy must be concerned with the value people place on religious spirituality. He argues, "the means of increasing the religiosity of society is rooted in the hearts of the people and the living presence of religion in society, and is not a man-made phenomenon with only external manifestations."<sup>243</sup> Like Soroush and Mojtaba-Shabestari, Kadivar believes that the system best suited to promote a religious society and provide for a just religious government is democracy. If the society is religious, then the democratically elected government will surely reflect its religiosity.<sup>244</sup> As discussed earlier, a religious government should then pursue religious goals and accept the supervision of the clergy. Kadivar then addresses the issue of *fuqaha* in the government.

Along the lines of Mojtaba-Shabestari's argument, Kadivar suggests that positions within the government be filled by people who possess the correct skills. Furthermore, there should be no relationship between the Islamic nature of the government and the clerical qualifications of its officials.<sup>245</sup> The officials within the government that require training in *fiqh* should be identified and filled with qualified *fuqaha*, such as judicial positions. The remaining positions, such as President of the

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<sup>242</sup> Mohsen Kadivar, "Goftogu ba Mohsen Kadivar" [An interview with Mohsen Kadivar], *Khordad*, (1998), p 3.

<sup>243</sup> Ibid.

<sup>244</sup> Soroush argues similarly that promoting religious thought in society will lead to religious government. However, Kadivar sees a role for the clergy in promoting religious belief, whereas Soroush does not.

<sup>245</sup> Kadivar, "Howzeh va hokumat" [The Seminary and the Government], *Rah-e Now* [New Way], p 6.

Republic, should not require religious training. This does not mean that the people should be forbidden to select a member of the *ulama* for a particular job, if they find him best qualified.<sup>246</sup>

By reviewing the necessary skills for all the positions of government, one will realize the limited suitability of *fiqh* for administering government. While *fiqh* may serve to administer certain areas of Muslim life, such as portions of the legal system, it should not serve as the basis for administration of all areas. As an example, Kadivar points out the difference between a dispute between merchants and the development of economic policy.<sup>247</sup> *Fiqh* is suited for the former, but cannot be used to develop the latter. In order to function properly, the government must be based on a rational discourse that includes all the areas of knowledge required to govern.

#### *Relations with the West*

Kadivar finds no conflict between modernity and Islam. Rather he attributes the continued rejection of many Western fields of knowledge to the ideological slogan that Islam is unchangeable, applicable in all eras, and able to administer modern Muslim society. Like Soroush and Mojtabah-Shabestari, he advocates a selective and critical engagement of Western ideas. Such a rational approach to Western ideas, rather than the rejection of the West as a whole, will allow for a productive exchange of ideas. As Kadivar puts it, "we have much to learn in the areas of philosophy, the social sciences

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<sup>246</sup> Ibid, p 7.

<sup>247</sup> Ibid, p 7.

and the hard sciences. On the other hand, we also have much to give in the fields of ethics and mysticism.”<sup>248</sup>

### *Conclusion*

By arguing that the institutions of religion and politics must be separated, Kadivar implicitly rejects Khomeini's concept of *velayat-e faqih* as it is codified in the Constitution of the Islamic Republic. He holds that when religious authority is combined with political power, the result is the politicization of religion and oppressive government. An example of this is the increased centralization of power in the hands of religious leaders based on the revised Constitution of 1989.<sup>249</sup> Acting independently of government, the *marja'iyat* (sources of religious imitation) and *howzehs* (religious seminaries) must serve as supervisors over government and society.<sup>250</sup> By doing so, the religious institution serves to spread religion in society, while limiting the potential for corrupt government. The potential for *maraji'* to act independently of government exists, in theory, particularly since the revision of Article 107 in 1989 did away with the requirement for the Leader to be a *marja'*.<sup>251</sup> As a practical matter, however, members of the *ulama* who have called for reform in the government have been oppressed.

He argues that in order for a religious government to be legitimate, it must pursue religious goals and enjoy the support of a majority of the religious people in society. This leads him to conclude that the ideal system for a religious government is democracy.

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<sup>248</sup> Mohsen Kadivar, "Goftogu ba Mohsen Kadivar" [An Interview with Mohsen Kadivar], *Khordad*, (1998), p 4.

<sup>249</sup> For examples of this see the section in chapter 2 entitled "The Revised Iranian Constitution of 1989".

<sup>250</sup> Mohsen Kadivar, "Howzeh va hokumat" [The Seminary and the Government], *Rah-e Now* [New Way], vol. 1, no. 2, (1998), p 2.

<sup>251</sup> *The Constitution of the Islamic Republic of Iran*, (Tehran; Islamic Propagation Organization, 1990), p 69.

Here too, he implicitly rejects the existing system of government based on the undemocratic manner in which its leaders are selected.<sup>252</sup> Finally, he points out that there is no inherent conflict between religion and modernity. Rather, through rational and selective engagement with the West, Muslim society can learn much in the fields of philosophy, social and hard sciences, while imparting much in the way of ethics and mysticism.<sup>253</sup>

### Conclusion

In this chapter, I have sought to evaluate the contemporary discourse in Iran regarding the nature of an Islamic Republic, and its implications for Khomeini's concept of *velayat-e faqih*. The three Iranian religious intellectuals, whose views have been discussed in this chapter, approach the issues from different perspectives. Soroush's point of departure is based on an epistemological understanding of the nature of religious knowledge, and its similarity to other fields of human knowledge, whereas the basis for Mojtabeh-Shabestari's argument is the deconstruction of one's understanding of religion, in an effort to find the essence of Islam. Lastly, Kadivar bases his argument on the nature of the power relationship between the institutions of religion and politics. In view of these varied approaches, their ideas concerning the nature of Islamic government and society are similar in some cases and very different in others.

Although their approaches differ, all three thinkers reject the use of Islam as ideology. By binding religion to a single official interpretation, ideology harms the

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<sup>252</sup> Under the revised 1989 Constitution the article stipulated in the 1979 Constitution stating that the faqih should enjoy the support of the decisive majority of the people was removed. For more regarding the codification of Khomeini's notion of *velayat-e faqih* in the constitution see chapter 2.

development of religious knowledge by stifling debate. Instead, they suggest that religious knowledge be subject to a variety of interpretations, which are then debated in an open public forum. Their critique of Islam as ideology undermines the legitimacy of Khomeini's notion of *velayat-e faqih* as codified in the Constitution of the Islamic Republic, and the government based on it. While all three agree that religious interpretation must be open to debate, they arrive at different conclusions as to the role of the clergy in the debate.

Soroush concludes that the clerical establishment should be dismantled in favor of a society of religious scholars, whose sole motivation is spreading religious knowledge in society. Soroush's view is contrasted by Mojtabeh-Shabestari's position that what is required is methodological reform within the seminary, rather than fundamental structural reform. He calls for deconstructing religious knowledge to determine the true essence of Islam. By doing so, the *ulama* will realize the limited role religion has in politics, and will be able to adapt the core values to the contemporary needs of Muslim society. Thus reformed, the clerical establishment will play a key role in the development of an Islamic Republic.

Kadivar and Soroush's positions share the basic idea that power corrupts. But where Soroush calls for the severing of all ties between power and religious knowledge, Kadivar argues that the clerical establishment must serve as a check to political power.<sup>254</sup> To serve in such a role, the clerical establishment must be separate from the government.

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<sup>253</sup>Mohsen Kadivar, "Goftogu ba Mohsen Kadivar" [An interview with Mohsen Kadivar], *Khordad*, (1998), p 4.

<sup>254</sup>Kadivar's position is similar to the traditional Shi'ite view of the relationship between the *ulama* and the political ruler, although he argues for a greater supervisory role.

Kadivar envisions a significant role for the clergy as supervisors of both government and society.

The arguments put forth by Soroush, Mojtabeh-Shabestari, and Kadivar call for varying degrees of reform within the clerical establishment. It is clear, however, that they disagree fundamentally with Khomeini's notion that the *foqaha* have a social and political duty to administer and rule the state, and implement the laws of the sacred path.<sup>255</sup>

Concerning the nature of Islamic government, Soroush, Mojtabeh-Shabestari, and Kadivar reach similar conclusions. Such a government should not be based on ideology, but rather on democracy. The focus of the clergy, or in Soroush's argument the 'society of religious scholars', should be to promote religious spirituality in society. By fostering deep faith among the population, the clerical establishment ensures that the popularly elected government will reflect the religious nature of society. In this way the government will be based on Islamic values, but Islam will not determine the form of the government. Furthermore, all three thinkers share the belief that *fiqh* should not determine the form of government.

The common theme among the three intellectuals regarding relations with the West is the call for rational and selective engagement of Western ideas and fields of knowledge. Rather than rejecting the West as a whole, they advocate the approach of evaluating various ideas individually, on their merits.

The arguments presented by Soroush, Mojtabeh-Shabestari, and Kadivar represent a significant challenge to Khomeini's notion of *velayat-e faqih*. By rejecting its manifestation as ideology within the Constitution of the Islamic Republic, and pointing

out the limited utility of *fiqh* in governing modern Islamic society, they undermine the sacred position it has enjoyed since the time of the Revolution.

More importantly, however, they suggest reforms such as popular government, respect for human rights, freeing the interpretation of Islam, changes in seminary methodology, and the rational engagement of Western ideas, as a means to achieving a just Islamic government and society. With the current discourse in mind, we will now turn to a discussion of the importance of Khomeini's *velayat-e faqih* to the Islamic Republic of Iran.

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<sup>255</sup> Khomeini, Al Hukuma Al islamiya [Islamic Government], (Tehran, 1979), pp 45-47.

## Conclusion

### The Evolution of a Revolution?

The development of Khomeini's concept of *velayat-e faqih* can best be described as a response to complex and significant social, political, and economic pressures within Iran during the twentieth century. The erosion of the prestige and power of the *ulama* at the hands of the Pahlavi Shahs, social upheaval brought on by the reforms of the White Revolution, and increased foreign influence in Iran are among the key factors that form the context within which Khomeini and other *ulama* sought to address the social and political challenges of their time. Based on Khomeini's experiences with monarchy and perhaps reflecting his mystical tendencies, he eventually concluded that only clerical rule could provide just governance, and lead mankind towards unity with God.

By adopting the broader definition of *velayat* espoused by Ahmad bin Mohammad al Naraqi 150 years earlier, Khomeini developed his notion, which while drastically different from the accepted doctrine established by Ansari, was accepted by many *foqaha* as within the boundaries of *fiqh*. Accordingly he called for the establishment of an Islamic state based on *shari'a*, and distinguished the *foqaha* as uniquely qualified to interpret God's law, and therefore to rule. Khomeini argued that the nature of the *velayat* exercised by the just *faqih* was no different than that of the Prophet, in terms of governing. Furthermore, according to his argument, the *faqih's* authority, like that of the Prophet and the *Imams*, devolved from God, thus severely limiting the prospects for popular sovereignty.

Although other interpretations of *velayat-e faqih* were discussed amongst the *ulama*, Khomeini's idea evolved to become more than a juristic theory. As a result of the



1979 Revolution and the events surrounding it, Khomeini's theory was codified extensively in the Constitution, resulting in its formulation as the ideology for the Islamic Republic. As such, the institutions of government, were based upon, and legitimized by it. Despite the Islamic nature of the Constitution, however, many secular and democratic elements were carried over from the previous Constitution, resulting in a variety of contradictions between the Constitution's Islamic and non-Islamic elements.

These contradictions are reflected in the contemporary political discourse, which increasingly questions the nature of an Islamic state, its clerical leadership, and the extent to which democracy and civil society can be tolerated in this system. It is within this current context that Khomeini's interpretation of *velayat-e faqih* is being challenged by the likes of Soroush, Mojtahed-Shabestari, and Kadivar.

Both the discourse, and events such as the student demonstrations in July, suggest that many Iranians reject the Islamic ideology founded on Khomeini's notion of *velayat-e faqih*, and the clerical government that it legitimizes. The debate also highlights the limitations of *fiqh* as a basis for governing modern Islamic society. The various arguments suggest a new conception of an Islamic Republic; one characterized by democratic government, respect for human rights, freedom of religious interpretation, an apolitical clerical establishment concerned with spreading religion in society, and rational engagement of Western ideas. While the discourse represents an indictment of the status quo, which is based on Khomeini's doctrine, the fact that the proponents of this discourse share a religious background suggests that meaningful change will likely come from within religious circles.

Since the Constitution establishes *shari'a* as the basis for law and legislation within the Islamic Republic, and distinguishes the *foqaha* as uniquely qualified to govern, significant reform of the system is likely to occur only if it comes from among the *foqaha*. With this in mind, the contributions of Ayatollahs Montazeri and Salehi-Najafabadi are examples of attempts, by senior *foqaha*, to reconcile notions such as popular sovereignty with the concept of *velayat-e faqih* doctrinally, within the domain of *fiqh*. Their juristic arguments serve to challenge Khomeini's notion within the realm of Islamic jurisprudence, while Kadivar, Mojtabeh-Shabestari, and lay-religious intellectuals such as Soroush, carry on the debate within the socio-political realm.

The potential for reform from within the clerical establishment was enhanced with the revision of the Constitution in 1989. The changes made to the position of Leadership centralize and strengthen its political power, while weakening its religious legitimacy by not requiring that the Leader be a *marja'-e taqlid*. In theory, a *marja'* who is not involved in politics could be recognized as the supreme religious leader, resulting in a division between temporal and religious leadership. Should this occur, it may loosen the ideological grip of the government on the interpretation of religion, and spur reforms within the clerical establishment.

An unintended consequence of the codification of Khomeini's theory in the Constitution of the Islamic Republic is that Islam and the *ulama* have been confronted with modern day realities. While this has highlighted the shortcomings of *fiqh* as a basis for government, the encounter with practical governance and greater exposure to the modern world has also prompted innovation and change within the clerical establishment

and Islamic thought.<sup>256</sup> One could argue that such change would not have occurred had the adoption of Khomeini's notion not placed the *ulama* in power.

Lastly, one could argue that *velayat-e faqih*, as interpreted by Khomeini, is the most significant element defining the context of contemporary social and political discourse in the Islamic Republic. While it is impossible to determine how the Islamic Republic will evolve, it is likely that many of the Islamic principles introduced into the Constitution through the codification of Khomeini's theory will remain. This is based on the notion that once introduced, an idea is very difficult to remove. As an example of this, one need only consider the durability of the democratic principles introduced during the Constitutional Revolution.<sup>257</sup> This argument would suggest that while Khomeini's notion of *velayat-e faqih* may pass into history, it will have served to establish an Islamic state, therefore making it possible for such a state to evolve, towards either a more democratic or autocratic Islamic Republic.

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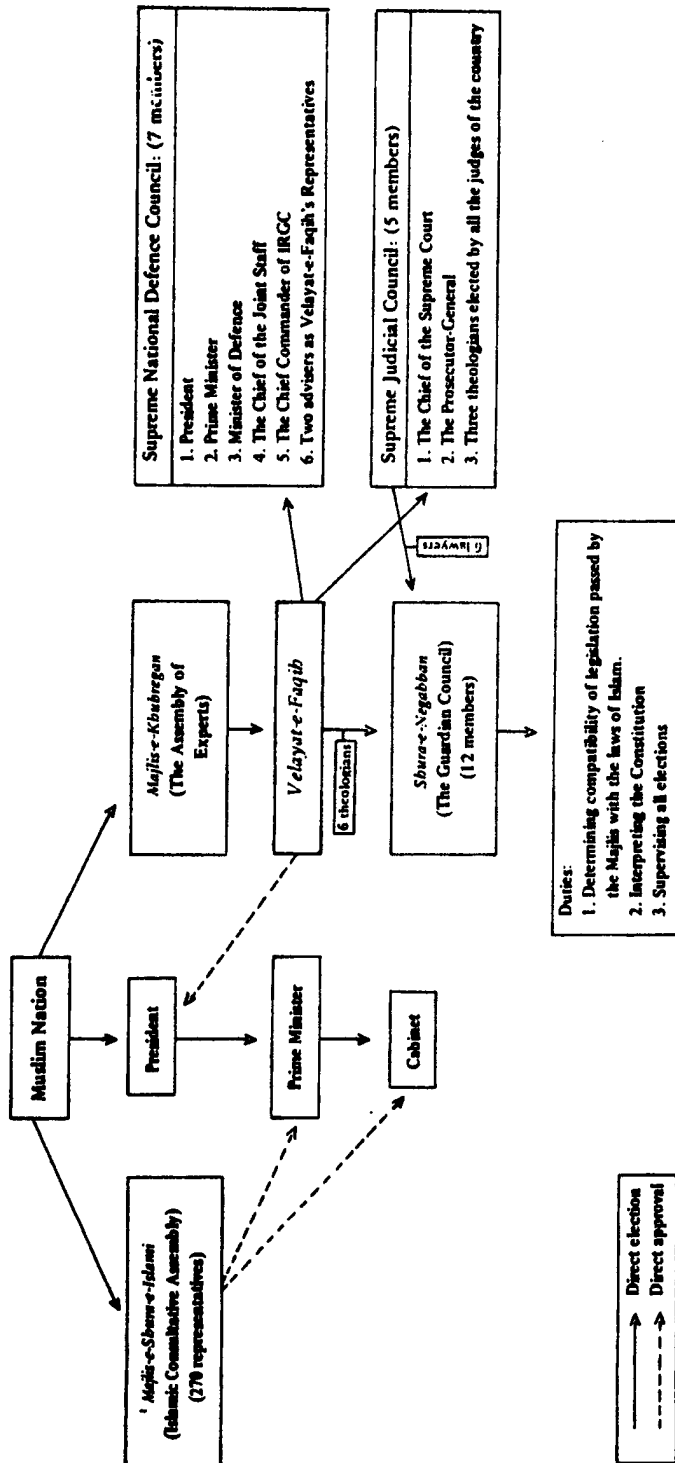
<sup>256</sup> Mohsen Milani refers to the potential for a 'renaissance' in Shi'ite political thought as a result of this phenomenon.

<sup>257</sup> The democratic principles introduced during the Constitutional Revolution remained codified in the Constitution and were at least tacitly acknowledged by the monarchs, throughout their reigns. Likewise, after the Islamic Revolution the democratic principles were carried over into the Islamic Constitution, and were even retained after the 1989 revision, when the clergy strengthened the central power of the ruling *faqih*.

## APPENDIX ONE

### STATE STRUCTURE OF THE ISLAMIC REPUBLIC OF IRAN

#### ACCORDING TO THE 1979 CONSTITUTION



## ACCORDING TO THE 1989 REVISED CONSTITUTION



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